

104  
**VIRGIN ISLANDS, GUAM, AND NORTHERN  
MARIANA ISLANDS ISSUES**

---

Y 4. R 31/3: 104-94

**INGS**  
Virgin Islands, Guam and Northern M...  
...E THE  
**SUBCOMMITTEE ON NATIVE AMERICAN & INSULAR  
AFFAIRS**  
OF THE  
**COMMITTEE ON RESOURCES**  
**HOUSE OF REPRESENTATIVES**  
**ONE HUNDRED FOURTH CONGRESS**  
**SECOND SESSION**  
**ON**

**VIRGIN ISLANDS AND GUAM ISSUES**

**DISPOSITION OF WATER ISLAND IN THE VIRGIN ISLANDS, RESOLU-  
TION 433, OF THE GUAM LEGISLATURE, AND CERTAIN PROVI-  
SIONS OF H.R. 3721**

JULY 24, 1996—WASHINGTON, DC

---

**VIRGIN ISLANDS AND NORTHERN MARIANA ISLANDS  
ISSUES**

**H.R. 3634 (EXECUTIVE OFFICIALS ABSENCE IN VIRGIN ISLAND), H.R.  
3635 (AUTHORITY TO MANAGE CHRISTIANSTED NATIONAL HIS-  
TORIC SITE) AND FEDERAL-COMMONWEALTH OF THE NORTHERN  
MARIANA ISLANDS INITIATIVE ON LABOR, IMMIGRATION, LAW EN-  
FORCEMENT, AND RELATED LEGISLATIVE REFORMS**

JUNE 26, 1996—WASHINGTON, DC

---

**Serial No. 104-94**

---

Printed for the use of the Committee on Resources





# VIRGIN ISLANDS, GUAM, AND NORTHERN MARIANA ISLANDS ISSUES

---

## HEARINGS

BEFORE THE

SUBCOMMITTEE ON NATIVE AMERICAN & INSULAR  
AFFAIRS

OF THE

COMMITTEE ON RESOURCES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

**VIRGIN ISLANDS AND GUAM ISSUES**

**DISPOSITION OF WATER ISLAND IN THE VIRGIN ISLANDS, RESOLU-  
TION 433, OF THE GUAM LEGISLATURE, AND CERTAIN PROVI-  
SIONS OF H.R. 3721**

JULY 24, 1996—WASHINGTON, DC

---

**VIRGIN ISLANDS AND NORTHERN MARIANA ISLANDS  
ISSUES**

**H.R. 3634 (EXECUTIVE OFFICIALS ABSENCE IN VIRGIN ISLAND), H.R.  
3635 (AUTHORITY TO MANAGE CHRISTIANSTED NATIONAL HIS-  
TORIC SITE) AND FEDERAL-COMMONWEALTH OF THE NORTHERN  
MARIANA ISLANDS INITIATIVE ON LABOR, IMMIGRATION, LAW EN-  
FORCEMENT, AND RELATED LEGISLATIVE REFORMS**

JUNE 26, 1996—WASHINGTON, DC

---

**Serial No. 104-94**

---

Printed for the use of the Committee on Resources



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

27-245 cc

---

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402

ISBN 0-16-053845-9

## COMMITTEE ON RESOURCES

DON YOUNG, Alaska, *Chairman*

W.J. (BILLY) TAUZIN, Louisiana  
JAMES V. HANSEN, Utah  
JIM SAXTON, New Jersey  
ELTON GALLEGLY, California  
JOHN J. DUNCAN, JR., Tennessee  
JOEL HEFLEY, Colorado  
JOHN T. DOOLITTLE, California  
WAYNE ALLARD, Colorado  
WAYNE T. GILCHREST, Maryland  
KEN CALVERT, California  
RICHARD W. POMBO, California  
PETER G. TORKILDSEN, Massachusetts  
J.D. HAYWORTH, Arizona  
FRANK A. CREMEANS, Ohio  
BARBARA CUBIN, Wyoming  
WES COOLEY, Oregon  
HELEN CHENOWETH, Idaho  
LINDA SMITH, Washington  
GEORGE P. RADANOVICH, California  
WALTER B. JONES, JR., North Carolina  
WILLIAM M. (MAC) THORNBERRY, Texas  
RICHARD (DOC) HASTINGS, Washington  
JACK METCALF, Washington  
JAMES B. LONGLEY, JR., Maine  
JOHN B. SHADEGG, Arizona  
JOHN E. ENSIGN, Nevada

GEORGE MILLER, California  
EDWARD J. MARKEY, Massachusetts  
NICK J. RAHALL II, West Virginia  
BRUCE F. VENTO, Minnesota  
DALE E. KILDEE, Michigan  
PAT WILLIAMS, Montana  
SAM GEJDENSON, Connecticut  
BILL RICHARDSON, New Mexico  
PETER A. DeFAZIO, Oregon  
ENI F.H. FALEOMAVAEGA, American Samoa  
TIM JOHNSON, South Dakota  
NEIL ABERCROMBIE, Hawaii  
GERRY E. STUDDS, Massachusetts  
SOLOMON P. ORTIZ, Texas  
OWEN B. PICKETT, Virginia  
FRANK PALLONE, JR., New Jersey  
CALVIN M. DOOLEY, California  
CARLOS A. ROMERO-BARCELÓ, Puerto Rico  
MAURICE D. HINCHEY, New York  
ROBERT A. UNDERWOOD, Guam  
SAM FARR, California  
PATRICK J. KENNEDY, Rhode Island

DANIEL VAL KISH, *Chief of Staff*

ELIZABETH MEGGINSON, *Chief Counsel*

CHRISTINE A. KENNEDY, *Chief Clerk/Administrator*

JOHN LAWRENCE, *Democratic Staff Director*

---

## SUBCOMMITTEE ON NATIVE AMERICAN & INSULAR AFFAIRS

ELTON GALLEGLY, California, *Chairman*

DON YOUNG, Alaska  
WAYNE T. GILCHREST, Maryland  
WALTER B. JONES, JR., North Carolina  
RICHARD (DOC) HASTINGS, Washington  
JACK METCALF, Washington  
JAMES B. LONGLEY, JR., Maine

ENI F.H. FALEOMAVAEGA, American Samoa  
DALE E. KILDEE, Michigan  
PAT WILLIAMS, Montana  
TIM JOHNSON, South Dakota  
CARLOS A. ROMERO-BARCELÓ, Puerto Rico  
ROBERT A. UNDERWOOD, Guam

TIM GLIDDEN, *Counsel*

T.E. MANASE MANSUR, *Professional Staff*

CHRISTOPHER STEARNS, *Democratic Counsel*



# CONTENTS

## VIRGIN ISLANDS, GUAM ISSUES

	Page
Hearing held: .....	
July 24, 1996 .....	1
H.R. 3721 .....	33
Statements of Members:	
Gallegly, Hon. Elton, a U.S. Representative from Ohio .....	1
prepared statement .....	4
Underwood, Hon. Robert A., a U.S. Delegate from Guam .....	4
Statements of witnesses:	
Barrett-Anderson, Senator Elizabeth, Guam Legislature .....	21
Prepared statement .....	74
Bordallo, Lt. Governor Madeleine Z., Guam .....	15
Cristobal, Senator Hope, Guam Legislature .....	23
Faleomavaega, F.H., (prepared statement) .....	13
Lutali, A. P., (prepared statement) .....	70
Pangelinan, Senator Vicente C., Guam Legislature (prepared statement) .	94
Stayman, Allen P. Director of Insular Affairs, Department of Interior .....	2
Prepared statement .....	58
Communication submitted:	
Resolution No. 433(LS) .....	84
United Nations General Assembly Report .....	97

## VIRGIN ISLANDS AND NORTHERN MARIANA ISLANDS

	Page
Hearing held June 26, 1996 .....	120
Text of:	
H.R. 3634 .....	185
H.R. 3635 .....	188
Statements of Members:	
Gallegly, Hon. Elton, a U.S. Representative from California .....	120
prepared statement .....	120, 165
Frazer, Hon. Victor, Delegate, Territory of the Virgin Islands .....	121
Hastings, Hon. Doc, (prepared statement ) .....	142
Statements of witnesses:	
Aloot, Sebastian, Attorney General, Commonwealth Northern Mariana Islands .....	161
Prepared statement .....	231
Babauta, Juan N., Resident Representative, Commonwealth Northern Mariana Islands .....	159
Prepared statement .....	209
Kennedy, Roger G., Director of National Parks, Department of the Interior .....	129
Prepared statement .....	196
Lewis, Wilma A., Inspector General of Interior .....	144
Prepared statement .....	199
McPhetres, Samuel F., President, Saipan Chamber of Commerce .....	173
Prepared statement .....	243
Schneider, Hon. Roy L., M.D., Governor of Virgin Islands .....	122
Prepared statement .....	191
Stayman, Allen P., Director of Insular Affairs, Department of the Interior .....	128, 143
Prepared statement .....	194

	Page
Communication submitted:	
Babauta, Juan N.: Letter of July 10, 1996 to Hon. Elton Gallegly .....	378
Federal-CNMI Initiative on Labor Immigration, & Law Enforcement, Report of June 1996 .....	251
Fleming, Evelyn C.: Letter of May 30, 1996 to Hon. Froilan C. Tenorio .....	374
Lewis, Wilma A.: Letter of July 10, 1996 to Hon. Elton Gallegly .....	352
San Nicolas, Jose C.: Memorandum of July 9, 1996 to Juan N. Babauta ...	375
Stayman, Allen P.:	
Answer to question for July 24, 1996 .....	391
Answer to question for July 26, 1996 .....	396
Tenorio, Froilan C.: Letter of June 1, 1996 to Hon. Diego T. Benavente and Hon. Jesus R. Sablan .....	373
Tenorio, Froilan C.: Letter of May 30, 1996 to Peter J. Scharwark .....	380
Additional material supplied:	
Ferrara, Peter: Tinkering with the success of liberty of Oct. 10, 1995 .....	298
House Bill No. 10-152, H.D.1 of Commonwealth Legislature, Northern Mariana .....	361
House Joint Resolution No. 10-1 of Commonwealth Legislature, Northern Mariana .....	327
I.G. Questions regarding the Audits in the NMI .....	146
Proposed Constitutional Amendment .....	359
Questions for Department of Justice .....	157
Questions for Wilma Lewis, Inspector General .....	145
Questions Regarding the Minimum Wage .....	157
Responses to Questions from Richard N. Reback, Department of Interior .	345
Responses to Questions from Wilma A. Lewis, Department of Interior .....	351
1985 Omnibus Territories Legislation Herring .....	386
Opinion: Pacific Daily News, dated August 30, 1996 .....	389

# VIRGIN ISLANDS, AND GUAM ISSUES

---

WEDNESDAY, JULY 24, 1996

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIVE  
AMERICAN AND INSULAR AFFAIRS, COMMITTEE ON RE-  
SOURCES,

*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:30 p.m., in room 1334, Longworth House Office Building, Hon. Elton Gallegly (Chairman of the Subcommittee) presiding.

## **STATEMENT OF HON. ELTON GALLEGLY, A U.S. REPRESENTATIVE FROM CALIFORNIA; AND CHAIRMAN, SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS**

Mr. GALLEGLY. This oversight hearing will cover the longstanding disposition of Water Island in the Virgin Islands, Resolution 433 of the Guam Legislature, and certain provisions of H.R. 3721.

I welcome our distinguished visitors from Guam, Lieutenant Governor Bordallo and Senators Barrett-Anderson and Cristobal.

The disposal of Water Island was identified by the Committee on Resources as a priority issue in the Committee's Oversight Plan for the 104th Congress. There are many American citizens who are still waiting to gain title with the land where their homes stand. It is unconscionable that the Department has taken nearly 4 years to conclude this matter. At a minimum, the Department of Interior should give clear timeframes for resolving each aspect for the disposal of Water Island.

The legislature of Guam has enacted Resolution 433, which requests that the Congress give Guam the authority to determine the method of selecting their attorney general. No doubt there is a compelling reason the legislature identified the selection of the attorney general as a matter of warranting a change in the current law. However, it is essential for Congress to hear the views of both the executive and legislative branches of Guam.

My colleague and ranking member of the Subcommittee from American Samoa has recently introduced legislation with a number of measures affecting the insular areas of the United States. While a number of these were covered in other earlier congressional hearings, I expect the witnesses will comment on the provisions pertaining to their territory.

The administration will comprise the first three panels and will be represented by Allen Stayman of the Office of Insular Affairs—one of my favorite offices.

The second panel will include the Lieutenant Governor of Guam, Madeleine Bordallo, presenting testimony on behalf of the Governor of Guam.

The last panel includes two senators from Guam, Senator Elizabeth Barrett-Anderson, and Senator Hope Cristobal. I understand Senator Barrett-Anderson has been appointed by the Speaker of the Guam Legislature, Don Parkinson, to represent the legislature regarding the proposed change in the Organic Act of Guam regarding the selection of the attorney general. I also understand that Senator Cristobal has a special interest in the proposed Guam Land Act.

[H.R. 3721 may be found at the end of hearing.]

Mr. GALLEGLY. We will now begin with the first panel. We have what sounds like a series of votes, and before I yield to Mr. Stayman, I apologize for coming in late; there was a little glitch, I guess, in some meetings, although I will take total responsibility for it and deal with that appropriately later. But in any event, as you heard, it appears there is a series of votes over on the Floor, and due to the current leadership's position on the voting rights of my delegate friends here, they will have a better opportunity to continue this meeting than I will have.

So with that, if you would please excuse me, Mr. Stayman, I will yield the gavel to my good friend, the delegate from American Samoa, Mr. Faleomavaega.

Mr. STAYMAN. Thank you.

#### **STATEMENT OF ALLEN P. STAYMAN, DIRECTOR OF INSULAR AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. STAYMAN. Mr. Chairman, and members of the Subcommittee, I am pleased to appear before you for this oversight hearing on Water Island, election of Guam's attorney general, and H.R. 3721.

The Department of the Interior has been the owner and lessor of Water Island for more than 40 years. Since before the expiration of the master lease in 1992, the Department has sought to dispose of its interest in the island. The process has been long and arduous. We are confident, however, that the process is coming to a close, with a fair and reasonable result.

On May 23rd, the Department outlined its plan for disposal of its interest in Water Island. Each sublessee will have the opportunity to purchase fee simple title to the subleased land on which his or her Water Island residence is located.

In addition, the Government of the Virgin Islands will be given fee simple title to non-subleased portions of Water Island for public purposes in exchange for the assumption of certain responsibilities, including provision of municipal services, cleanup of storm damage, and establishment of conservation easements.

In resolution of a suit by the master lessee against the Department, the parties submitted a formal settlement by which the Department will pay the master lessee \$7.5 million for the lessee's possessory interest in Water Island.

With the judge's expected approval of the settlement on August 2nd, we believe that this long Water Island transfer process is drawing to a close.

The Legislature of Guam in Resolution 433 requests that the Organic Act of Guam be amended to require election of the attorney general. I believe that the issue of appointment or election of the attorney general is a local self-government issue which should be decided in Guam. Accordingly, the Department takes no position on the matter at this time. We would, however, likely support a position based on consensus in Guam.

Turning to H.R. 3721, the administration has no objection to Title I regarding delegate balloting.

Title II would establish an American Samoa study commission to conduct a comprehensive study of American Samoa's political status. While the administration supports the objective of Title II, its general policy discourages the establishment of commissions. Moreover, I believe that initial discussions on political status should be undertaken at the local level and that the Federal Government should become involved only after some local consensus has been established.

For example, both Guam and the Virgin Islands established local status commissions to examine status and constitution questions. Funding for such a local initiative could be made available from the Department's technical assistance program.

Title III includes a proposal authorizing up to \$10 million a year for fiscal years 1998 through 2003 for capital development in American Samoa. A multi-year funding source was identified by the Department and became law earlier this year, as section 118 of Public Law 104-134. The administration, in response to a letter from Delegate Faleomavaega, estimated that American Samoa will receive a minimum of \$9.1 million annually from this guaranteed source beginning in fiscal year 1998. The proposed authorization would cap funding from this source at \$10 million annually.

The administration endorses the concept of Title V, clarification of Federal program matching. We do suggest, however, that to avoid possible confusion, the provision be redrafted to conform to language adopted earlier this month by the Senate Committee on Appropriations.

Section 602 authorizes Guam to acquire Federal excess lands on the island at no cost and ahead of other Federal agencies. It would waive provisions of the National Environmental Policy Act and the Endangered Species Act, as well as other laws.

Section 602 also makes no provision for habitat conservation and threatened/endangered species protection in the event of transfer to the Government of Guam.

For these reasons, we strongly oppose section 602 as introduced. However, the Department is prepared to enter into discussions to resolve these concerns based on two principles. First, any unneeded Federal lands that are outside the boundary of the Guam National Wildlife Refuge and refuge overlay lands could be transferred to the Government of Guam provided that such transfers are in accordance with the National Environmental Policy Act and other Federal laws.

Second, a process could be established to develop a habitat conservation plan for private or Guam owned lands, in conjunction with the Government of Guam, the Department of Defense and private interests, to (1) maximize the amount of unneeded Federal

land to go to the Government of Guam and (2) provide adequate protection to threatened and endangered species and their habitat in accordance with the Endangered Species Act.

This planning approach would allow all three parties to work together to determine, after considering all lands on Guam, adequate habitat needed to meet threatened and endangered species requirements. It is possible that private lands, Government of Guam lands with compatible uses, military lands not expected to become excess or surplus, may meet the habitat needs of many threatened and endangered species. Other lands could then be freed for other uses.

We look to Guam for an expression of interest in developing such a habitat protection agreement.

The administration supports enactment of section 603, which would repeal the so-called Brooks Amendment.

Finally, Title VIII would establish a six-member commission to evaluate future economic options for the Virgin Islands. Again, the administration supports the objective of Title VIII. However, administration policy is generally against the creation of new commissions.

Alternatively, we would recommend that the Office of Insular Affairs and Governor Schneider explore the possibilities of an agreement for technical assistance to achieve the purposes of Title VIII.

Mr. Chairman, thank you for this opportunity to present the administration's views. I look forward to working with the Subcommittee members and to responding to your questions.

Also, let me ask that my full written statement be included as a part of the record.

Mr. FALEOMAVAEGA. [Presiding.] Without objection.

[The statement of Mr. Stayman may be found at end of hearing.]

Mr. FALEOMAVAEGA. The chair recognizes the gentlemen from the Virgin Islands to be part of the hearing process this afternoon and certainly would like to ask both members if they have any opening statements.

Congressman Frazer?

Mr. FRAZER. No, Mr. Chairman, I have no opening statement.

Mr. FALEOMAVAEGA. Mr. Underwood?

#### **STATEMENT OF HON. ROBERT A. UNDERWOOD, A DELEGATE IN CONGRESS FROM THE TERRITORY OF GUAM**

Mr. UNDERWOOD. Thank you, Mr. Chairman. I have an opening statement which I will submit for the record.

Mr. FALEOMAVAEGA. Without objection.

Mr. UNDERWOOD. I also have some communication from the Compiler of Laws on Guam on the issue of the elected attorney general that I would like to submit for the record as well as a Pacific Daily News Editorial on the land situation.

Mr. FALEOMAVAEGA. Without objection.

[The prepared statement of Hon. Robert A. Underwood follows:]

#### **STATEMENT OF HON. ROBERT A. UNDERWOOD, A U.S. DELEGATE FROM GUAM**

Mr. Chairman, I commend you for your leadership in holding this hearing today and for your continued commitment to working with the Delegates on issues important to our communities. I also wish to note and congratulate the Chairman for his introduction of H.R. 3879, the Northern Marianas Delegate Act. This historic bill is also cosponsored by Chairman Don Young, Subcommittee Ranking Member Eni

Faleomavaega and myself. I look forward to welcoming a new colleague representing Guam's northern neighbors in the 105th Congress.

This subcommittee continues to make substantial progress on issues affecting Guam. I am pleased that Ranking Member Faleomavaega included the provisions of the Guam Land Return Act in Title VI of his bill, H.R. 3721, and I thank Mr. Faleomavaega for his support for the return of excess federal property to the people of Guam. This provision would amend the Federal Property Act by changing the order of priority for receiving excess federal property. Under this amendment, the Government of Guam would have the first right of refusal for such lands.

We have been working diligently with the Committee on Resources and our Senate counterparts on Guam land issues in the 103d and 104th Congresses. The Guam Land Return Act represents another important milestone in achieving a comprehensive solution to Guam's land issues.

As this committee knows from its involvement in land legislation, over one third of the land on Guam is owned by the federal government. Most of these land holdings belong to the military. The end of the Cold War and military downsizing has given us an opportunity to make progress in resolving land issues that trace their origins to the manner in which the lands were originally acquired by the military after World War II. The Guam Land Return Act is important legislation that will help us to resolve the historical injustices of the land takings.

I am aware of opposition to this title by the Department of the Interior, ostensibly over concerns over the endangered and threatened species on Guam. Interior must think that the birds on Guam are extremely intelligent—they are rare species that can read land deeds. Interior would have you believe that if the land deeds transferred from the military to GovGuam, then the birds would refuse to breed. I think Interior needs to get out more often.

I would also point out that in a hearing held on July 11, by the Subcommittee on Fisheries, Wildlife and Oceans on non-indigenous species, Dr. Tom Fritts, Director of the National Biological Survey, responded on the record to my question about the habitat issue. He acknowledged that the level of development in Guam and Saipan is similar, and that the birds thrive on Saipan. The real problem on Guam is not lack of habitat, it is the brown tree snake. Dr. Fritts further answered on the record in response to a second question that the U.S. Fish and Wildlife Service (USFWS) has only committed approximately \$40,000 of its own funds to brown tree snake eradication. As I have pointed out before if the Fish and Wildlife Service was truly committed to Guam's endangered species, it would put its money where its mouth is—in brown tree snake eradication.

The Guam Land Return Act would not undo what the Fish and Wildlife has done in acquiring 370 acres of land at Ritidian for its wildlife refuge—although that is not a bad idea for this committee to consider. This provision gives Guam the first right of refusal for lands declared excess in the future.

This committee is also accepting testimony regarding a request by the 23rd Guam Legislature to amend the Organic Act of Guam to allow for the election of the Attorney General. I believe that the committee should defer action this request until we have received additional input from the Guam Judicial Council and other interested parties. We should be careful to ensure that changes to the Organic Act are not made in a way to suggest that the Congress is involving itself in the politics of the moment on Guam.

Mr. Chairman, as we consider issues that may be packaged in a House Omnibus Territories bill, I would urge this committee to consider including a Title for Guam war restitution. We had a very good hearing on this issue in the 103rd Congress, and earlier in this Congress on the Chairman's bill, H.R. 602, that included a war restitution provision. I believe that we are very close to resolving all the issues in the proposed war restitution amendment, and I commend the Chairman for his continued support of our efforts on this issue. I hope that we can include war restitution in any House Omnibus bill, and I know that this committee appreciates the great impact that a resolution of this issue will have on the people of Guam.

Again, Mr. Chairman, I wish to express my gratitude for your leadership on territorial issues. We have a full plate of issues to address today. I hope we can complete work on these issues so that we can clear the deck for our consideration of another bill very important Guam, H.R. 1056, the Guam Commonwealth Act, in the remaining days of the 104th Congress and the 105th Congress.

Mr. FALEOMAVAEGA. I would like to turn to Mr. Frazer for his questions.

Mr. FRAZER. Thank you, Mr. Chairman.

Mr. Stayman, we know that the leases expired on Water Island in late 1991, and you are quite aware of the anxiety of the residents of that island. Could you tell me, within a reasonable timeframe, when I can report to the residents of the island that they will in fact be receiving fee simple titles.

Mr. STAYMAN. Yes. What we have explained to them in earlier meetings, but it would be appropriate, of course, to update them, is that we intend to undertake a three-phase disposal of the island. What is holding us up is the suit in the Federal claims court. Recently, the judge indicated that he will enter the settlement between the Department and the former master leaseholder on or before August 2nd. At that time, we will send letters to each of the sublessees, offering them the opportunity to buy the sublease on which their residence exists.

We expect in the September timeframe, we will transfer to the Government of the Virgin Islands certain areas that would be for public use—about 50 acres. Then, the third phase would be early next year, when any residual lands would be transferred to the Government of the Virgin Islands.

Mr. FRAZER. It is my understanding that a company in Bryn Mawr, Pennsylvania leased about 156 acres and that there was an agreement between the Department of the Interior and this company that 40 acres would have been set aside for something like a preserve. Could you tell me if that area is one of the areas that is going to be considered transferrable to the Virgin Islands?

Mr. STAYMAN. I am pretty certain from your description that what we are talking about is the so-called Spratt Bay Point, which is about 40 acres, and it is our expectation that that will be transferred to the Government of the Virgin Islands in phase three when many of the conservation lands or conservation easements will be transferred. We are holding that to the third phase because we would also like to put in that third phase those lands which sublessees do not want to buy.

Mr. FRAZER. Are you aware that there is a figure that is being thrown around that the selling price will be about \$17,500?

Mr. STAYMAN. Yes. We have informed all interested parties—that is, all sublessees—that that will be the asking price per acre once we are able to make the offer after the court acts.

Mr. FRAZER. And there is an understanding that the sublessees would be given the choice of first refusal on the subleases that they had, which are now expired, but would the rest of the land be open to anyone who is interested at this \$17,500, or does it relate only to the sublessees?

Mr. STAYMAN. The offer will only be extended to the sublessees. That is why we are planning for this third phase. There will obviously be some sublessees who do not want to buy. Those lots will be transferred to the Government of the Virgin Islands.

Mr. FRAZER. There is a misunderstanding by many people in the Virgin Islands that the lands are not subject to past subleases and that they will be available for sale to anyone interested at \$17,500; that is not correct?

Mr. STAYMAN. That is not correct.

Mr. FRAZER. Thank you.

Mr. FALOMAVEGA. The gentleman from Guam.



Mr. UNDERWOOD. Mr. Stayman, my questions obviously pertain to the issue of most concern to me, that is, how to deal with the Federal excess lands on Guam.

In your testimony a few weeks ago in the Senate hearing on this bill, you indicated the administration's unwillingness to support this bill, and today you come with essentially the same message except for some ideas on how this can perhaps be dealt with. You talked about developing a habitat conservation plan. Based on your conversations with Fish and Wildlife Service, could you give us some examples of what this may mean in terms of freeing up some land?

Mr. STAYMAN. Yes. Stepping back a little bit, the habitat conservation planning process is one that there is quite a bit of experience with under this administration—I believe over 100 such plans have been approved, and a couple additional hundred are in negotiation.

The administration believes that habitat protection and economic development need not be mutually exclusive. If all parties who have an interest in lands, in this case in Guam, could determine which lands are necessary for the critical habitat needs of threatened and endangered species, then that it may be possible to free up some of the lands. Once the Fish and Wildlife Service has identified interests necessary for species protection, an increase in the amount of land that could be transferred to Guam is possible.

There is just one other example that I might give that might make it a little clearer. In my understanding of the situation in Guam, there are, I believe, eight bird and bat species that are endangered and for which the Fish and Wildlife Service is looking for habitat. One of those species utilizes golf courses. If there is an agreement, which satisfies the habitat needs of that particular species, then there would no longer be a need on the part of the Fish and Wildlife Service to get excess DoD lands.

Mr. UNDERWOOD. Then, based on what you are saying, if the people on Guam were willing to engage in this process, and you took a significant amount of acreage—let us say we are talking about 5,000 or 6,000 acres, for example—would the administration then support the process for those particular lands identified in the legislation?

Mr. STAYMAN. I do not know that I understand the 5,000 that you are talking about.

Mr. UNDERWOOD. OK. For the sake of argument, let us say the lands that are down in southern Guam in the naval magazine area—and I know we have had some discussion on this particular property, right, that there are a couple of species out there, one of which inhabits caves, and that would be dealt with in a way that would allow that land to be freed for the purpose of releasing that land to the Government of Guam—assuming that there was some successful understanding of how to deal with that land, would you then support the process of return that is identified in this legislation, or do you still have reservations about the way that the transfer is proposed here?

Mr. STAYMAN. If this process is fully successful, my understanding is that—and when I say “fully successful,” all habitat needs would be met through a plan, and they would have confidence that

all parties would be supporting that plan—they would not feel it necessary to ask for excess land because the plan would meet their needs.

Mr. UNDERWOOD. OK. Remember that the legislation here does not specifically refer to Fish and Wildlife Service, but it does refer to putting the Government of Guam at the head of the line for the return of Federal excess land. So the question I am asking is that I am trying to understand how you see this process working. What I am hearing you say—and maybe I am wrong—what I am hearing you say is that the administration does not necessarily object to putting Guam at the head of the line if a habitat conservation plan can be arranged—or is that reaching too far?

Mr. STAYMAN. I think that is reaching a little far. I can be honest to say that there is a lot of discussion on this within the administration and that the theory of the habitat conservation plan would be worth pursuing even if it were not 100 percent successful; if it were 50 or 80 percent successful, that would mean perhaps 50 or 80 percent of the land which Fish and Wildlife Service is currently seeking for species could be gotten.

Mr. UNDERWOOD. Well, then, it would seem to me that the administration's position has not really changed significantly in terms of the process that we are identifying here. What it seems that you are identifying in terms of trying to negotiate an arrangement or arrive at a habitat conservation plan is open to us regardless and independent of this legislation. We could begin this process tomorrow, could we not?

Mr. STAYMAN. Certainly, yes.

Mr. UNDERWOOD. Certainly. So what you are offering could be done independently of the legislation, but the question that I was asking was related specifically to the legislation. Is the administration saying that the legislation is fine assuming that we go into a habitat conservation plan, and the answer that I am hearing you say is no.

Mr. STAYMAN. Yes. The answer is no.

Mr. UNDERWOOD. Well, then, I would submit that nothing has really changed that significantly, other than a willingness to discuss the issue, and I hope that that is always part of the process.

There is no need to belabor the issue on the return of excess lands by the Federal Government to Guam other than to note for the record that what I am talking about here, as is well-known to you, Mr. Stayman, is a very difficult historical problem that has been left to us.

The problem that I think we will have in engaging in the process of working out a habitat conservation plan is that we have a number of competing interests. We have the issues of historical injustice, we have the problem with how the land was originally taken, we have attempts to try to deal with that. We have pressing needs on Guam, and to propose that a habitat conservation plan take precedence on that is to put that plan at the head of the list of all those competing considerations.

I think most people on Guam are realistic enough, and I certainly am realistic enough to understand that the concerns of the Fish and Wildlife Service are important and should be considered, but I do not think in the sum total of things that they should be

the primary consideration or be, if you would, the head of the list on this particular issue.

Thank you, Mr. Chairman.

Mr. FALÉOMAVAEGA. I have just a couple of questions as a follow-up to Congressman Underwood's questions, Mr. Stayman.

As I read this return of Federal excess lands to the Government of Guam, you have competing agencies—Fish and Wildlife Service, the Department of Defense and the Department of the Interior. If I were to place a priority in terms of our national interest in these so-called Federal excess lands, which agency do you think will have the final shot on this in terms of outlining the final position of the administration if there are excess lands to be transferred to Guam?

Mr. STAYMAN. Well, right now, under the—

Mr. FALÉOMAVAEGA. You are making the statement that the habitat conservation sounds really nice and good, but I am of the opinion that it is our strategic and military interests that will probably have a higher consideration when it comes to really bearing down, if in fact that day ever comes, these excess lands will ever be transferred back to the Government of Guam.

Mr. STAYMAN. The participation of the Department of Defense in this process would not be so much with respect to the excess lands, but with respect to those lands that they would retain. And if they can meet some of Fish and Wildlife Service's concerns with lands that they are going to retain, then Fish and Wildlife Service may be more willing to not ask under the Federal Property Act for transfer of the excess lands.

Mr. FALÉOMAVAEGA. If there were a national emergency today, Mr. Stayman, do you think Fish and Wildlife is going to have some sense of priority when DoD says, "We need that piece of land to put some military equipment; the heck with Fish and Wildlife"? Do you think that this all washes out when it comes to a national emergency?

Mr. STAYMAN. Oh, yes, it does. National security takes precedence, but for now, these are lands that DoD says they do not need.

Mr. FALÉOMAVAEGA. I see.

Mr. STAYMAN. And under the current law, it falls to the next agency which has an interest, and as far as I know, there is only one, and that is the Fish and Wildlife Service.

Mr. FALÉOMAVAEGA. So that for now, the opinion of the Department of the Interior is that habitat and conservation and Fish and Wildlife seem to be co-equal as far as any consideration of the Department of Defense.

Mr. STAYMAN. No. As I just said, if the Department of Defense says they no longer need the land, then it goes to the next Federal agency which has an interest, and at this time, the only such agency of which I am aware is Fish and Wildlife Service.

Mr. FALÉOMAVAEGA. And as far as that line of priority goes, then, the Government of Guam is the least important as far as any consideration for its needs.

Mr. STAYMAN. Under the current law, if no Federal agency wanted it—and in the case of much of this land, there is no Federal agency that wants it—the Government of Guam would be next in line.

Mr. FALCOMA. It would be my earnest hope that the Department of the Interior will be supportive of the request based on the very reason why we drafted this legislation, which is to give the Government of Guam more access to any excess land that the Federal Government does not need. I would like to ask if it still bears true today. Is it true that one-third of the island is owned by the military, one-third is owned by the local government, and the other one-third is owned by business interests?

Mr. STAYMAN. Yes, that is my understanding.

Mr. FALCOMA. And with that position, if the Government of Guam has a need for more economic self-sufficiency and more development, do you think that we are being somewhat unfair that the military really has a need for one-third of the whole island being used? Does it really justify itself that the military has a need for one-third of that whole island?

Mr. STAYMAN. I would have to say that the military has endeavored to try to minimize the amount of land. I believe—and the Congressman can correct me—that they used to control one-half of the island, and the prospect is that they will be going to one-quarter and that they are making an effort to release those lands which are not absolutely essential to their mission.

Mr. FALCOMA. Would the Department of the Interior be at least supportive of the spirit of this legislation, which is simply to give more access to the excess land, if there is excess land, that could be identified for the needs of the Government of Guam?

Mr. STAYMAN. Yes, absolutely, but our concern and our proposal is to enter into a process where that goal, maximizing the land to the Government of Guam, is balanced with a goal with which the Department is charged under law, and that is protecting the habitat and species that are threatened and endangered. We believe that if we enter into a process in which all parties—in this case, the Department of Interior, the Department of Defense, the Government of Guam and private landowners on Guam—examine all lands in Guam, keeping in mind those two goals, they will come out with a solution which is much better for everyone than the prospect or the process we are currently facing, which is that Fish and Wildlife Service is looking to excess military lands in order to assist them in meeting their mission.

I go back again to the example of the moorhen. Here is a species that can do well against the snake, can do well in any water environment or marshland environment. There are probably many private landowners on Guam—I use the example of a golf course—who may be able to provide habitat needed for this species. If such an agreement can be entered into, and the Fish and Wildlife Service has confidence that that will meet their needs and the species' needs, then they do not have to seek excess military land. But we have not gone through that process yet.

Mr. FALCOMA. Well, you say "the process," and maybe the gentleman from Guam could help me, but how long has this process been going on—6 years?

Mr. STAYMAN. No. This process has not started. We are proposing to Guam that we enter into this. There was an effort many years ago to do this, but at that time, the Government of Guam was not interested. We are hopeful that given the success of the Habitat

Conservation Plan process in other areas of the country—a very good track record—that the Government of Guam might be persuaded that this is a process worth entering into. I fully recognize that it is unlikely to be 100 percent successful, but I also do not believe that if we do otherwise we would be totally unsuccessful. I think there are opportunities to reduce the demands of the Fish and Wildlife Service on excess military lands on Guam, and I think we should enter into that process.

Mr. FALCOMA. Can you give us your best judgment as to how long the process will take, if you think there is a possibility that the process can be completed and done without having to go through Federal legislation to kind of push you to produce some results?

Mr. STAYMAN. Accompanying me today is Mr. Gerry Jackson from the Fish and Wildlife Service, who is quite familiar with this. Could I just consult with him and ask how long, on average, these processes have taken in other areas?

Mr. FALCOMA. While I welcome Mr. Jackson's presence, the problem is that we do not have anybody here representing the Department of Defense, and I suspect that they are just as much hardliners as far as giving up any inch of whatever land the military feels is more important than even habitat. So I would welcome Mr. Jackson's opinion, but just give me a good guess as to how long you think the process is going to go, without having to go through the legislation that we are proposing here. I sure hope it is not another 6 years.

Mr. STAYMAN. Mr. Jackson informs me that if all things go relatively smoothly, with a commitment by all parties to these two objectives, a year is a reasonable timeframe for the process.

Mr. FALCOMA. We could resolve this in one year's time?

Mr. STAYMAN. Well, again, we are talking about a process that I do not think should be regarded as an all-or-nothing process. We have some dozen species here, and I doubt that we could come up with a solution for all dozen. But if we come up with a solution for half of them, that is going to have clear benefits to the Government of Guam.

Mr. FALCOMA. I yield to the gentleman from Guam.

Mr. UNDERWOOD. Thank you. I just wanted to touch on the issue of the connection with the Department of Defense since, in my capacity as a member of the Armed Services Committee, we once took a trip to Fort Bragg to watch some maneuvers, and we noticed that there were some very carefully and strategically placed ribbons for tanks and the soldiers to avoid certain trees where a certain woodpecker apparently lives. So indeed, some of these laws do apply to defense activities.

Mr. Stayman, you raised an issue with regard to this particular situation, and let me try to characterize it as best I understand it. The Department of Defense wants the land to be turned over to the people of Guam as quickly as possible, and that has always been their expression, but Fish and Wildlife—and in your statement, you mentioned DoD's concern about restrictions on land that they will continue to hold, because absent the habitat conservation plan that is being proposed, it is conceivable that Fish and Wildlife, through

its own mechanisms, may impose restrictions on the use of property that DoD will continue to hold into the foreseeable future.

This presents a very interesting scenario which, I guess the best face you could put on it is that Fish and Wildlife is putting a lot of pressure on the Department of Defense. The worst face you can put on it is that Fish and Wildlife is blackmailing the Department of Defense into taking a hard position on this particular item.

The Department of Defense I know has been difficult historically on Guam, but in recent years, at least on the issue of land, they have certainly been more willing to be cooperative.

I think people should be willing to explore the process you have outlined. I do not discount it. I think people should be willing to explore that process of coming up with a habitat conservation plan. It is just that there are three things that come to my mind. One is that the Department of Defense's position has been compromised not because of the issue of whether they want to return the land or whether they need the military land anymore; it is that they have been made to understand by Fish and Wildlife that their future use of the land that they intend to hold for the foreseeable future would be complicated by Fish and Wildlife regulations.

The second concern is that we would go into a habitat conservation plan negotiation in which Fish and Wildlife will continue to hold all the cards, in which we have to get Fish and Wildlife to have confidence that the resulting plan would meet those things. So the negotiation is such that Fish and Wildlife continues to hold 90 percent of the cards.

And the third item is that even if there were agreement on this process, the part that I think Mr. Faleomavaega was touching on is an important one. At least the spirit of the proposed legislation says that the Government of Guam should be at the head of the line because of all the kinds of things that all of us are familiar with on this particular issue on land and the return of excess land, that the Government of Guam should be at the head of the line in front of all Federal agencies. And even on that, I think the administration has not yet softened its position, and that still remains a source of concern.

But DoD's role in this has been a curious one and one that certainly through the land conference process which we instituted collaboratively with the Department of the Interior and which I am very grateful for and do not want these comments to be in any way disparaging of any willingness to discuss these issues—I think there is serious willingness, and I know that you personally would like to see this issue behind us, and I appreciate that, and I appreciate the willingness for dialog and to continue to creatively craft some solution to this—but when the Department of Defense has been led to believe that their existing holdings, not willing that they are willing to excess, is going to be compromised by Fish and Wildlife, and as a result of that, they then start taking a different position on the release of excess land, I think there is room to say that Fish and Wildlife has buffaloeed DoD.

Mr. FALEOMAVAEGA. I thank the gentleman from Guam for his comments.

Without objection, for the sake of time, I am going to submit my opening statement to be made a part of the record, and Governor Lutali's statement will also be made a part of the record.

[The parpered statement of Hon. Eni F.H. Faleomavaega follows:]

#### STATEMENT OF HON. ENI F.H. FALEOMAVAEGA

Mr. Chairman, Thank you for holding a hearing this afternoon on several of the technical issues now facing the U.S. territories. I hope we are able to address these issues during the remaining days of this Congress, and I am optimistic that we can reach consensus on most, if not all, of these provisions.

Among the issues under discussion today are some of those contained in a bill I introduced, H.R. 3721, a bill to establish an Omnibus Territories Act. This legislation is an attempt to combine into one bill several of the less controversial legislative initiatives which have been pending or discussed during this Congress, but which have not been approved by the Subcommittee. I will address the titles under consideration by title number:

**Title I.** Under current federal law, American Samoa, Guam, and the Virgin Islands are all required to conduct elections for the delegates' positions by separate ballot. There is no legislative history on this issue which indicates a rationale for this requirement, and I have been unable to determine the continued need for this provision.

In the absence of a substantive rationale for the language, the Government of Guam has requested that the requirement be deleted because it costs the government additional funds to print separate ballots for the delegate election. Deletion of the requirement would enable the government of Guam to conduct its elections in a more efficient manner, without jeopardizing the integrity of the elections. As introduced, H.R. 3721 included the Virgin Islands in this title. Congressman Frazer has requested that the Virgin Islands retain the requirement for a separate ballot. It was not my intent to force this change on the Virgin Islands, and I support deleting the Virgin Islands from Title I.

**Title II.** The territory of American Samoa is the only unorganized, unincorporated territory of the United States. There is no single document which reflects the present unity of the running debate for decades over the intent of the Samoa chiefs who signed the documents joining American Samoa and the United States into a political union. Whether the intent was to cede the land and people to the United States, or to enter into a bilateral treaty, which would, at some point, be subject to further negotiations, is not clear.

Title II would establish a federal commission which would document and report on exactly what took place 96 years ago when the Eastern part of the Samoa Island groups became part of the United States, and what this bilateral relationship has developed into since 1900. The Commission would also be directed to report on the various status options available to American Samoa. The Commission would be composed of five members, three of whom would be appointed by the Secretary of the Interior, one by the Speaker of the U.S. House of Representatives, and one by the President of the U.S. Senate.

I want to emphasize the unlike the sometimes contentious negotiations on political status in Guam and the always contentious discussions on political status in Puerto Rico, this proposal does *not*, and I want to say this again, *this legislation does not establish a political status commission*. The Commission will not have the authority to change American Samoa's political status. The commission is modeled after the Commissions which studied Native Hawaiian, Native American, and Native Alaskan issues. These three commissions provided resource materials which have been of significant benefit to these groups and to those who are interested in the history of these issues.

The establishment of the American Samoa commission has been a topic of discussion in American Samoa ever since I first proposed it several years ago. Some have questioned the need for a federal commission, indicating that there is more than sufficient talent in American Samoa to convene a commission of this nature. In response, let me say that I agree that there are many individuals in Samoa with the knowledge and experience to make excellent members of the commission I propose, and I hope that some of these individuals will sit on the Commission. The key, however, is having access to the resources of the federal government, such as the Library of Congress, and access to the records of the federal departments and agencies, including the materials contained in the National Archives. It is only through a federal commission that we can ensure that these resources are made available.

Additionally, the commission will be federally funded, which will enable the local government to use its limited financial resources to improve its capital infrastructure and continue to provide basic services.

Finally with regard to the proposed study commission, I have suggested in the Congressional findings, and propose to include in the duties, that the commission study and evaluate the historical relationship of Swains Island and the Tokelau group of Islands to American Samoa. Swains Island was added to American Samoa in 1925 without consultation with the leaders in American Samoa, and I believe it would be useful to examine both how this occurred and any relationship between Swains Island and the Tokelau group which may warrant further federal consideration.

**Title III.** American Samoa is the one territory most in need of economic assistance in developing the basic infrastructure necessary to promote successful economic development. It is dependent on an annual federal appropriation to assist with the operations of its government and for improvement to its infrastructure. Each year, an appropriation is made pursuant to a 1929 statute providing for the government of American Samoa. The American Samoa Government does not know from one year to the next how much funding it will receive, and this uncertainty makes planning of the larger construction projects more difficult and more expensive.

Title III of this legislation authorizes \$10 million per year for six years for capital improvement projects. Any appropriations made pursuant to this legislation would be made in the regular appropriations process through the Department of the Interior.

The subcommittee has not asked for testimony pertaining to Title IV or H.R. 3721, which would add Baker Island, Jarvis Island, and Howland Island to American Samoa. Our Chairman proposed in early 1995 adding these islands, and others, to the jurisdiction of the State of Hawaii. At that time, the Hawaii delegations were either opposed to or silent on the proposal, and based on this hesitancy I included in H.R. 3721 language which would add the three southernmost islands of this group to the territory of American Samoa. These islands are closer to American Samoa than they are to any other U.S. land mass, and at their closest point they are about 800 miles from Swains Island, the northern island in American Samoa. It was my intent to seek federal sanctuary status for these islands, similar to that of Rose Atoll.

I was unaware when I introduced this title that Senator Akaka had introduced legislation the day before to add these and other islands to the State of Hawaii. After the legislation was introduced, Congressman Abercrombie's office expressed some concern with this title. Yesterday, I spoke with Senator Akaka on this issue, and he has informed me that his efforts are to provide a protective umbrella for these islands. A recent proposal to construct a nuclear waste facility on the island on Palmyra prompted the Senator to provide this extra protection for the Pacific islands, and I want to commend him for his current effort. For these reasons, I wish to delete Title IV from further consideration by the Subcommittee.

**Title IV.** Under prior law and pursuant to a covenant reached between the Commonwealth of the Northern Mariana Islands (CNMI) and the United States, the CNMI was receiving \$27.7 million per year to be used for the construction of capital improvements in the Commonwealth. Earlier this year, we changed this law, and portions of that funding are now directed to insular areas with greater needs. The language authorizing this funding prohibited the use of the funds to match other federal grants. The reallocation was made in such a way that the non-matching requirement is now applicable to the other territories receiving the funding. I am familiar with the difficulties this creates for American Samoa, and would like to share this with the Members of the Subcommittee.

American Samoa has been hit by three hurricanes in the last decade, and as is the case with the states, with a presidential declaration of a state of disaster, disaster assistance grants have been made available to the local government. Unfortunately, Samoa's economy was so devastated by these hurricanes, and the financial wherewithal of the local government is so low, that the American Samoa Government has been unable to take advantage of several of these grants because it could not meet the local matching requirement. Title V will permit the American Samoa Government to use this source of funds, already earmarked for capital improvements, to meet the matching requirement for grants for the construction of capital assets.

**Title VI.** The people of Guam yielded much of their land to the United States during World War II. Now, as the federal government is contracting in size, parcels of this land in Guam are being considered excess. Title VI would give the government of Guam first option to acquire this excess property as it becomes available.



With regard to Title VII, the Subcommittee has already held a hearing on Section 701 of the legislation, and Sections 702 and 703 are more appropriately under the jurisdiction of the Committee on Ways and Means. For these reasons, testimony was not solicited on this title. I will, however, say that I support all three of these provisions.

**Title VIII.** The Virgin Islands is another territory which is struggling to make itself self-sustaining. The elected representatives of the U.S. Virgin Islands believe that a commission of experts could develop a plan which would enable the Virgin Islands to focus their efforts in the proper direction. This title would establish a six-member Commission, appointed by the President. The Commission would make recommendations to the President and Congress on the policies and programs necessary to provide for a secure and self-sustaining future for the Virgin Islands.

Thank you, Mr. Chairman, for the opportunity to present this statement. I look forward to hearing from our witnesses.

[The statement of Governor A.P. Lutali may be found at end of hearing.]

Mr. FALEOMAVAEGA. I do have some questions, Mr. Stayman, and I think I will pose those for you in written form so that we can move our hearing along this afternoon. I want to thank you for your comments and also for representing the administration at this hearing.

Mr. FALEOMAVAEGA. I would now like to turn the time over to the gentleman from Guam to introduce our next panel for the hearing this afternoon.

Mr. UNDERWOOD. Thank you, Mr. Chairman.

It is my honor and privilege to introduce to the Subcommittee the honorable Madeleine Z. Bordallo, the Lieutenant Governor of Guam, representing Carl Gutierrez, who is Governor of Guam.

In my interactions with Governor Bordallo in the past few days on Guam, she was the acting Governor; I do not know if she is the acting Governor anymore, now that the other Governor is back on Guam. But we will let the Virgin Islands figure out all those problems with Governors and acting Governors and whatnot.

It is a privilege and an honor. I have worked with the gentle lady for many years, and it has always been a privilege; she has always done an excellent job of representing the island and its interests.

Mr. FALEOMAVAEGA. I, too, would like to offer my personal welcome to Lieutenant Governor Bordallo for her presence this afternoon, and certainly the Subcommittee looks forward to hearing her testimony this afternoon.

Please.

#### **STATEMENT OF HON. MADELEINE Z. BORDALLO, LIEUTENANT GOVERNOR OF THE TERRITORY OF GUAM**

Ms. BORDALLO. Thank you very much, honorable delegate Faleomavaega and the members of the Subcommittee on Native American and Insular Affairs. Of course, I would like to also welcome and say "Hafa adai" to Congressman Underwood. Mr. Chairman, we came in on the same flight today, and he looks so bright and cheery, and my hours are all out of sync, so please bear with me.

On behalf of the people of Guam and Governor Carl T.C. Gutierrez, I extend a warm "Hafa adai" from the land where America's day begins. In the same spirit, I thank you for this opportunity to discuss issues of importance to our people that are contained in H.R. 3721 and other matters of concern to this committee.

Your interest in matters of concern to us is indeed heartening, and we stand ready to work with you to accomplish these goals.

As you are aware, the people of Guam since 1987 have outlined their views on a host of matters that would address the structure of our relationship with the United States, that will allow the people of Guam, through a Constitution, to establish their internal self-governance. As we speak, Guam's Commission on Self-Determination is in the middle of intense discussions with the administration on mutually agreeable language which will be submitted to Congress and which, with the blessings of Congress, will form the foundation of a new and more equitable political partnership between Guam and the United States.

However, Mr. Chairman, I would like to focus on an issue of enormous significance to Guam today, and that is the issue of land. Guam's total land area is small, very small, just 210 square miles—smaller than even the smallest State of the Union. Of this, the Federal Government controls 70 square miles, or approximately 33 percent of the island's total land mass.

Mr. Chairman, even these numbers are deceiving because the 70 square miles encompass the most usable lands and the best stretches of beach and water frontage. In terms of economic development, the Federal Government controls the best parcels.

Prior to the extensive land condemnations by the Naval Government during and immediately after World War II, most land was privately held. After the War, our elders, out of gratitude and patriotism and loyalty, never disputed the need for the Federal Government, especially the military, to use the land for national security purposes.

However, fundamental fairness dictates that these lands should be returned to Guam when they are no longer needed for national security.

Mr. Chairman, Guam's growing population and our economic development require that we, the people of Guam, be the first and the final determiners of all forms of land use except that which can be proven without dispute is required for national security purposes.

H.R. 3721, like the Senate's companion measure, S. 1804, corrects several anomalies that occur when federally-held land has either been returned or is about to be returned to Guam.

Please be assured that we support expedited processes of land return which make Guam's interests the priority in lands exceded by the Defense Department. Guam's needs and the needs of its people must always be the first priority for the return of lands exceded by DoD. The fact that they are being returned by DoD is proof that the properties are no longer required for national security purposes.

Unfortunately and unfairly for the people of Guam, lands about to be returned by the Department of Defense have been grabbed by other Federal agencies. Recognizing the national security interests of Guam and the unique history of the United States owning Guam, lands not needed for U.S. national security must be returned to the people of Guam, not put on the auction block for any Federal interest's bid.

In 1991, the Department of Defense agreed to transfer about 300 acres of land located at Ritidian Point to Guam. At the last mo-

ment, Guam learned that the Fish and Wildlife Service had claimed the land.

The Fish and Wildlife Service turned the land into an unfunded wildlife refuge for native birds that effectively have been driven to extinction by the brown tree snake which thrives in this refuge. While Fish and Wildlife conducts an expensive and only marginally successful breeding program for some of these birds at Front Royal, Virginia, they have no plan to eliminate the predatory snake in Guam's jungles. Without an elimination of the brown tree snake, all the breeding programs conducted in Virginia, California, Florida or elsewhere are but exercises in futility.

Guam's lands were once taken for national defense, then again taken for reasons that have never been fully explained to or understood by the people of Guam—and I repeat, Mr. Chairman, we have so little land. H.R. 3721, like S. 1804, would prevent another such land grab and would help free previous land transfers from constraints on the use of returned lands.

A prime example is the return of 927 acres of reclaimed and submerged lands in Apra Harbor to the Government of Guam. The development of this property, which has no national security uses or significance, is burdened with the unreasonable constraint more properly referred to as the Brooks Amendment. It is a Federal law which mandates that any profits from the lease or sale of the property must be given to the U.S. Government.

The Brooks Amendment has removed any incentive for the Port of Guam to spend its own funds to provide the necessary infrastructure and capital improvements to upgrade the existing facilities. Subsequently, there has been no economic development on that land.

Excess property, which had no national security significance to the Department of Defense, but which holds tremendous economic potential for the people of Guam, lies idle, Mr. Chairman, because a Federal statute mandates that the profits from that property must be given to the U.S. Treasury.

We would like this committee to consider a related issue—land that is to be transferred should first be cleaned up. Early in the life of our administration, hazardous waste was discovered on land formerly held by the Department of Defense but which was turned over to the Government of Guam as the site for our new Southern High School. Work was halted to ensure workers' safety, and construction delays cost us over \$1 million. In addition to the cost of delays, we also bore the cost of cleanup to ensure that costs resulting from the construction delays did not become unmanageable.

Mr. Chairman, the people of Guam have proven that they are willing to work with the military or any other Federal agency, including the Environmental Protection Agency, to make sure that cleanup activities proceed as efficiently and economically as possible for all parties. We want to put unused lands to productive use for public and economic development purposes.

The expeditious transfer of federally-held lands is necessary to accomplish results that are meaningful to the people of Guam as well as to the United States. We are confident that H.R. 3721 and S. 1804 are steps in this direction. After exhaustive study, we believe that there are about 27,000 acres of federally-held property

that can be returned to Guam. Some of that is covered by BRAC decisions or H.R. 2144, making the passage of H.R. 3721 and S. 1804 even more timely.

Our economy could be developed even more if we had control over more of the prime property now held by the Federal Government. The island's best beach properties are either landlocked by or are part of exclusive-use military property. Of the property within a 3-mile radius of Guam's deep water port, 65 percent is federally-held.

At stake is not just the disposal of Federal assets, but the future of our community.

The committee's call for this hearing also invited comment on a Guam resolution requesting language to enable the creation of an elected attorney general. Mr. Chairman, I would like to briefly comment on that.

Our administration is of the opinion that the mechanism for such already exists, and that is the result of the Omnibus Territories Act of 1985 where Guam would elect an independent prosecutor. Guam's senators have not opted to exercise that mechanism, and the opinion and the consensus of the people through public hearings and other public forums, we feel should be ascertained before any form of commitment or action is taken in this regard—in other words, a referendum.

In conclusion, I would like to personally invite you, Mr. Chairman, and members of this committee to come to Guam. It is important to witness firsthand the issues under your review here, and it is important that you get to know us and our plight better, bear witness to the impact of your work on our island, as together we move forward in a partnership that fairly balances Guam's interests with the continuing Federal interest in national security.

In Chamorro, we express our gratitude with a sincere "Dangkolu Na Si Yu'os Ma'ase." Thank you, Mr. Chairman, for allowing me to speak to you about these important issues.

Mr. FALCOMA. Thank you, Madam Governor.

The gentleman from Guam.

Mr. UNDERWOOD. Thank you very much, Governor, for your very fine statement. Could you perhaps elaborate on some of the problems that the Government of Guam has had with the Federal lands that have been turned over and some of the cleanup problems that we have had?

Mr. BORDALLO. Well, delegate, as I mentioned, I think one of the most exasperating was when we began to build our Southern High School, and we found lands there that were not cleaned up. We had to halt the construction, and it cost our local government over \$1 million, as I mentioned in my testimony. This is one example.

Mr. UNDERWOOD. And in terms of the overall process that has been identified in terms of the land return process for the Government of Guam goes to the head of the line in the return of Federal excess lands, maybe you could explain to the committee, or at least for the record, why Guam should be treated differently from other areas of the United States.

Ms. BORDALLO. Getting back to the other question, I do remember another area. This is the NES again, land that was recently returned to us, BRAC '93.

First of all, Mr. Chairman, we are not in possession of that property; we do not have a deed as yet to that property. We are simply caretakers operating under licensed facilities. We have not even agreed on a lease as yet, but we are working on it. But there are 26 areas at the Naval Air Station now known locally as Tejin that are contaminated, and I understand that it will take anywhere from 8 to 10 years to clean up.

So these are some of the frustrating problems that we have in acquiring Federal property.

Mr. UNDERWOOD. The question I had, Governor, was that the legislation that has been proposed by myself and the delegate from American Samoa in his omnibus measure holds that the Government of Guam should be treated differently than other areas under the United States in terms of the return of Federal excess lands. Perhaps you can elaborate on why this is justifiable in comparison to other areas of the United States.

Ms. BORDALLO. Well, I feel certainly as you do, Delegate Underwood, that the Government of Guam should be placed at the top of the priority list. One of the reasons is that we just have so little land, and the Federal Government has taken over all of the choice areas on Guam including our beachfronts. So for this reason, I think the Government of Guam should be placed at the top of the priority list, and if there is any other habitat conservation plan that is being thought of, I certainly am one to recognize that importance, but I do not think that the minute Federal properties are available, or they are thinking about turning it over to the Government of Guam, that the habitat conservation plan should come first, and we should come second or third or whatever. I feel that because of the small area and how precious our lands are and that our people—we have so many people who are crying for land, original landowners—this should be considered, and I think these properties should be turned over to the Government of Guam as a top priority.

Mr. UNDERWOOD. And just for the record, I wanted to clarify on the Brooks Amendment legislation. We have that in a different piece of legislation that has already made it through the Department of Defense authorization process, so hopefully it becomes fixed that way. I think that at least that is one thing that almost everybody agrees on, and now that Mr. Brooks is gone—thank you.

Ms. BORDALLO. And Congressman, I would mention that this halts our progress. We are so anxious to begin our economic plans for Guam, and with the Brooks Amendment, it just puts everything on hold.

Mr. UNDERWOOD. Thank you very much.

Mr. FALEOMAVAEGA. Madam Governor, is it my understanding that there are still 22,000 acres that the DoD was willing to transfer to the Government of Guam, but because of the interjection of the Fish and Wildlife Service and in concurrence with the Department of the Interior, these 22,000 acres are now at bay—I mean, there is nothing being done to make this transfer possible?

Ms. BORDALLO. That is correct.

Mr. FALEOMAVAEGA. Do you believe that the provisions of the bill as proposed for this transfer will remedy that difficulty or the problems that we currently have?

Ms. BORDALLO. Yes, I do.

Mr. FALEOMAVAEGA. I have always wondered if our friends in the Department of the Interior are advocates for the Territories, or if they are enemies. I am somewhat puzzled by all this, seeing that as the primary agency that has responsibility for the Territories, at least a better understanding of Fish and Wildlife Service and the history of how the lands in Guam were literally just taken over by the military after the World War, without due compensation and without really even giving the people of Guam the opportunity to reclaim their lands.

I happen to have an understanding of that, and I am really puzzled by why our friends from the Department of the Interior are not advocating for the needs of the Government of Guam, especially in this pending legislation.

Madam Governor, I want to personally welcome you again and to thank you for taking the long trip here to Washington to testify before the Subcommittee. Some of the fondest memories that I have are of the time that you were there with Governor Bordallo and the hospitality and kindness that was afforded me, and the times that I visited the beautiful Island of Guam, I will never forget. And I want to thank you, and I sincerely hope that perhaps in some due time, the committee will have an opportunity to visit Guam again and to hopefully flesh out some of these issues, and that we can find remedies and solutions and not continue to have problems with them.

So again, Madam Governor, thank you for your testimony.

Ms. BORDALLO. Thank you, Mr. Chairman.

In closing, I would like to add one point, and perhaps the delegate is not aware of this, but recently, I visited several of our golf courses when we had a tournament of champions to raise money for beautification on Guam, and some of the managers of our golf courses told us that they have so many birds in the golf courses. So perhaps the Department of the Interior people may want to go out and look at this. I cannot think of a better refuge for birds than our beautiful golf courses, so I am just suggesting that perhaps a visit to Guam will enlighten some of our Department of the Interior officials.

Mr. FALEOMAVAEGA. Well taken. Thank you very much, Madam Governor.

Ms. BORDALLO. Thank you, Mr. Chairman.

Mr. FALEOMAVAEGA. For our next panel, we have the honorable Elizabeth Barrett-Anderson of the Guam Legislature, and the honorable Hope Cristobal, also a member of the Guam Legislature.

I certainly would like to give this opportunity to our good friend, the gentleman from Guam, for any introductory remarks he may have.

Mr. UNDERWOOD. Thank you again, Mr. Chairman.

It is my honor and privilege to present to the committee Senators Hope Cristobal and Elizabeth Barrett-Anderson. As can be clearly seen by the presentations today, male elected officials are an endangered species on Guam, and females continue to make great strides in the political environment of Guam and certainly, as we heard the testimony of the Governor, it was remarkably fresh,

given the fact that she just came off a flight that I know took some 24 hours.

I would certainly like to welcome and extend my sincerest "Hafa adai" to my two colleagues from Guam. I know the committee will be attentive to their testimony.

Thank you.

Mr. FALDOMAVEGA. If the gentleman would yield, I will also say that they are better-looking than the men of Guam. Please proceed.

**STATEMENT OF HON. ELIZABETH BARRETT-ANDERSON,  
SENATOR, GUAM LEGISLATURE**

Ms. BARRETT-ANDERSON. Thank you very much, Mr. Chairman, and "Hafa adai" from Guam. Robert, it is good to see you all. I came a day earlier to be a bit more refreshed. You are truly a Chamorro gentleman. Your remarks were right on par for Guam.

I have written testimony, Mr. Chairman, that I would like if it is appropriate to move to be accepted. I will not read from my written testimony but will speak directly to the committee.

Mr. FALDOMAVEGA. Without objection, it will be made part of the record.

[The prepared statement of Ms. Barrett-Anderson may be found at end of hearing.]

Ms. BARRETT-ANDERSON. Resolution 433 was adopted by the Guam Legislature last month, unanimously voted on, to request this committee and this Congress to amend the Organic Act to allow for an elected attorney general, specifically.

The resolution seeks to change two major portions of the Organic Act dealing with the executive branch, and I will deal with those very briefly.

It will provide that the executive branch will now have a third coequal position, and that position would be the attorney general. The Organic Act of Guam provides for the Governor and Lieutenant Governor in the executive branch. This resolution would now allow a third coequal position to be the attorney general.

I believe that it is important to establish this as an organic position or, more generally called a constitutional position, because currently the attorney general position on Guam is a statutorily-enacted local position, meaning that it is established by the laws of the Territory. The Attorney General of Guam is a directorship. It is a line agency head. It is not a constitutional position.

The danger in not doing this, and if the Territory were to have an elected attorney general without this amendment, would be that any challenge would clearly hold that that local statute would be inorganic; it would not withstand any constitutional challenge.

The Governor has complete, absolute and plenary authority over the entire executive branch of the Government of Guam. Let me give you an example to highlight this. Several years ago in 1986, this body authorized the Territory to establish an educational system in the Territory of Guam. In 1993, the Guam Legislature enacted the elected board of education. This administration, soon after coming into office, took a court challenge, and that decision is still pending before the trial court in the Territory of Guam, challenging the organic-ness of the elected board of education.

I believe the Governor is correct; I believe the Governor is correct in that the elected board of education is inorganic, because nothing can impinge on the Governor's organic authority to control the executive branch in total, and that includes education.

So that providing that the attorney general is now a coequal position in the executive branch will prevent future litigation as to the elected attorney general.

Secondly, and I think perhaps the one item that most members of this Congress might be a bit uncomfortable with, is that the Guam Legislature has asked this Congress to specifically state that the attorney general will be elected. Generally, Congress provides that a territory or a jurisdiction is authorized to determine under local law whether it is appointed or elected.

This amendment was placed on the floor during debate. The original measure did not have that. In debate, it was discussed that there should be no question that what the Territory wants is an elected attorney general. If it is left that the Territory of Guam may decide how it wants to select it, then obviously we can decide to maintain it as an appointed position or an elected position.

I believe that Congress providing that it shall be elected is consistent with Congress' plenary authority over the territories and would be consistent with Congress' intent that Guam be self-governing.

Mr. Chairman, I was attorney general for 7½ years, and I can tell you that the most important aspect of this resolution is that it is another example of self-government for the Territory. Let me express four situations where this Congress has provided self-government to the Territory.

First, in 1968, with the elected Governor of Guam; second, in the mid-1970's, with the authorization of the Territory to go forth and create a Constitution. It has been 20 years, and we have not done it, but we still have the authority to establish a Constitution for the Territory.

Third, in 1983, when the restriction prohibiting the establishment of a municipal government was deleted from the Organic Act. Guam can today create municipal government. We do not have municipal government.

And then, fourth, in 1986, when this Congress gave the Territory the power to establish the Supreme Court of Guam. Unfortunately, we have a Supreme Court, but we do not have a Constitution for them to interpret.

And the fifth one was when this Congress allowed Guam to establish its own tax code.

Those are five clear examples of self-government. This Congress has been overly generous to the Territory in saying to Guam, "If you want to be self-governing, here are some of the tools to do it."

We are asking for the sixth example, that this Congress allow the Territory to have an elected attorney general as a clear and convincing and unequivocal statement of self-government for the Territory.

Thank you, Mr. Chairman.

Mr. FALCOMAVEGA. Thank you.

[The prepared statement of Hon. Elizabeth Barrett-Anderson, Delegate from Guam may be found at the end of the hearing.]



Senator Cristobal?

**STATEMENT OF HON. HOPE CRISTOBAL, SENATOR, GUAM  
LEGISLATURE**

Ms. CRISTOBAL. Thank you, honorable Chairman. Buenos dias and Hafa adai from the people of Guam.

Honorable Chairman and members of the committee, my name is Hope Alvarez Cristobal, and I am the chairperson of the Committee on Federal and Foreign Affairs in the Government of Guam Legislature, of which my colleague, Senator Barrett-Anderson, is a member.

On behalf of the people of Guam, I offer this testimony in support of the Omnibus Territories Act, H.R. 3721, Title VI, the Guam Land Return Act. Referencing the three sections, 601 is the name of the Act; 602 basically seeks to amend the Organic Act of Guam to add a new title, section X, to require the administrator of the General Services agency to notify the Government of Guam that property is available. Notice is to occur at least 180 days before transferring excess real property located in Guam to any Federal agency; (b) the administrator shall transfer to the Government of Guam all right, title and interest of the U.S. in the excess real property located in Guam by quitclaim deed and without reimbursement if Government of Guam does express interest in the availability of such Federal lands; and (c) the term "excess real property" means excess property as that defined under section 3 of the Federal Property and Administrative Services Act of 1949 as in effect on the date of enactment of the Guam Land Return Act that is real property.

Section 603 amends section 818(b) of Public Law 96-418 relating to a condition on disposal by Guam of lands conveyed to Guam by the U.S.

Although we fully recognize the rationale for a general policy allowing Federal agencies to be a priority consideration as a recipient in acquiring any excess Federal lands, we support a different prioritization policy for Guam given the fact that insular landholdings in this area are rather small and limited. Limited land resources in Guam have prevented the Government from moving ahead with any meaningful or ambitious economic revitalization program.

Much of the Guam lands acquired by the Federal Government involve the acquisition of private property through seizures or through condemnation processes which denied people a measure of full due process rights, especially in the cases of private property acquisition.

To our Chamorro people, the indigenous people of Guam, land tenure is viewed as inseparable to their existence and well-being. As an example, if I were to harvest crops from my mother's land, my whole relationship with family members and villagers comes into play. Harvesting and sharing crops is a way of establishing stature and strengthening ties among family members and the village community.

We hold with high honor and respect one who shares food coming from the land. Ownership of land is not just as a commodity but as inheritance to be passed on down through the generations. Even

today, our people continue to believe that they will someday obtain their other lands back from the Federal Government. In the eyes of the Chamorro people, the lands were only to be utilized by the Federal Government and not owned, just like they had practiced for centuries.

It is also important that the unique situation of the people of Guam, living on a fragile and limited land mass and environment, continues to be recognized. Furthermore, GSA policies which give higher prioritization to other Federal agencies in the use of Federal excess lands are incongruent to a developing people who have experienced the unjust taking of their lands. Because of the circumstances of the land takings after the war and the people's lack of resources then, it is only proper that the people of Guam, through the Government of Guam, be given priority in terms of access to these lands.

The people of Guam felt betrayed after they discovered that the Department of Interior's Fish and Wildlife had obtained the so-called wildlife refuge at Litekyan. It was beyond anyone's imagination that Tun Benigno Flores, a landowner, as well as other landowners at Ritidian, would never return to his childhood playground, family fishing hold, family land, and most of all, the legacy of his ancestors.

I implore Congress to place in check the Department of Interior's creative and innovative predation of Guam lands for parks and wildlife preservation and conservation.

As a point of information, Mr. Chairman, under the Organic Act of Guam, the legislature is given a distinct role in the disposition of lands. I ask, then, that under this proposed measure, the Guam Legislature's role be protected and enhanced.

Congressman, I fully support the proposed amendments by Congressman Underwood under Congressman Faleomavaega's proposed Omnibus Territories Act, H.R. 3721.

Si Yu'os ma'ase, and I thank you for your support and for your invitation to testify on this very important legislation.

Mr. Chairman, I would also like to at this point submit the testimony of one of my colleagues of the Guam Legislature with respect to the elected attorney general position. My colleague, Senator Vincente Pangelinan, had put together testimony. He is the author of a bill, 571, which is ready to go on the floor of the legislature.

Ms. BARRETT-ANDERSON. Mr. Chairman and Senator Cristobal, that is with the exhibits that I turned in with my written testimony.

Mr. FALEOMAVAEGA. Without objection, the statements of both Senators will be made part of the record and any other materials that you wish to submit will be made part of the record.

[The prepared statement of Vicente C. Pangelinan, Delegate from Guam, may be found at end of hearing.]

Ms. BARRETT-ANDERSON. Mr. Chairman, may I also say that I do support H.R. 3721. I think it is very creative, and it is going to go a long way to help the Territory of Guam. I enjoyed the questions that came from the panel here, and I hope that this full Congress passes it favorably.

Mr. FALCOMA. I thank both senators for their fine testimony, and I would like to turn the time now to the gentleman from Guam for questions.

Mr. UNDERWOOD. Thank you, Mr. Chairman, and thank you both for your eloquent testimony on the issue of land.

I guess we have discussed land enough, but we will continue to discuss it inevitably, even in other fora, I am sure.

I just want to ask a couple of questions on the proposed elected attorney general and the resolution. Senator Barrett-Anderson, you indicated that you were attorney general under the Ada administration. What do you think Governor Ada would think of this proposal?

Ms. BARRETT-ANDERSON. Oh, I do not think there is a Governor on this globe who would support taking away that privilege of appointing the highest legal officer. As an appointed attorney general and a successful, hopefully, appointed attorney general, it is ironic that I would be the strongest proponent for an elected position. There were situations where it was very difficult in my position.

What would Governor Ada's position be? Knowing Joe Ada, a lot of times, Mr. Underwood, he did not quite understand the role of the attorney general, and maybe that is why we worked out just fine. He certainly let me do my job as best I could, and other than the abortion issue which is stated in my testimony, that probably was the most difficult of times in our relationship.

Mr. UNDERWOOD. I found it very curious in your review of Guam's move toward more internal self-government where you described various steps that have been taken along the way, and then in your presentation, you indicated that in the Guam Legislature there was discussion as to whether this would be permissive or whether what you are proposing would require an elected attorney general, and then you said that by requiring it, it would actually promote more self-government. Isn't there an inconsistency in saying that if I allow you to do something, and you decide whether or not to do it yourself, that that is in fact more self-government than saying to you, "I hereby mandate that you must do this"?

Ms. BARRETT-ANDERSON. Well, Congressman Underwood, I think the end product is certainly self-government. I know what you are talking about, and as I said earlier, the original draft as I had prepared it put it in terms of this Congress providing the authority and letting the Territory then decide which way it goes.

In response to your question, the Territory through its elected senators have made a self-government statement through this resolution. It will make a second self-government statement through bill 571 that has received I think unanimous support from the Committee on Judiciary to get it onto the floor of the legislature perhaps by the August or September session.

So in that respect, I think we have made a self-government statement.

Mr. UNDERWOOD. What is in bill 571?

Ms. BARRETT-ANDERSON. Bill 571 is actually a companion to the resolution. If this resolution were adopted by this Congress, the Territory would then enact the statute that specifically states the manner in which an elected attorney general is selected. So they are companion measures. One is the bill, the statutory enactment.

And the question would be, if Congress were to pass this and the bill were enacted, would the Governor sign it. Well, that is a question. He would be subject to either override or sustaining the veto.

If 571 were to be adopted in August session, it would have to have a provision that that bill is subject to congressional authorization as outlined, perhaps, if it is acceptable, in Resolution 433.

Mr. UNDERWOOD. The Government of Guam currently has the authority to elect a prosecutor.

Ms. BARRETT-ANDERSON. No. That is incorrect.

Mr. UNDERWOOD. That is incorrect?

Ms. BARRETT-ANDERSON. That is incorrect. The provision in the Organic Act does not state that, Mr. Congressman, and I will read it. It allows the Territory to establish an Office of Territorial Prosecutor. To me, that means it can establish an office. In my legal mind, it does not give the Government of Guam, the legislature, the authority to establish an elected prosecutor. I give you the example of the Territorial board of education. It is being challenged right now. I believe the Governor's challenge is valid. If tomorrow the legislature passes an elected Territorial prosecutor, I think that that will likewise be challenged similar to the elected board.

You must have a change in the executive structure of the Governor. The Governor's power is complete and absolute in relation to his control over the executive branch of Government.

Please understand also that I would not favor, having been a former attorney general, bifurcating the criminal division of the attorney general's office and elevating that to an elected position. It is a small enough island, it is a small enough department of law that I believe the elected position should not be the chief prosecutor; it should be the attorney general of Guam.

If the Territory wants to establish a district attorney position, which is the Territorial prosecutor, I can understand that, but it cannot today be an elected position without congressional authority.

Mr. UNDERWOOD. So your interpretation of the existing Organic Act does not give the Government of Guam the right to authorize an election for a prosecutor?

Ms. BARRETT-ANDERSON. I do not think it would in the same manner that the provision that says the Government of Guam can establish an educational structure likewise does not say it can have an elected board of education.

Mr. Congressman, right now, that decision with regard to the elected board is winding its way through—it is actually under review by Judge Gatewood. We do not know exactly how she is going to turn out on that. She might surprise all of us and say the elected board is organic. I think that is very unlikely, because it is a hard struggle with that decision.

Mr. UNDERWOOD. Are there other offices that you think should be elected?

Ms. BARRETT-ANDERSON. There are traditionally three positions in most jurisdictions that are elected in the executive branch, Congressman, and those are the Governor, the Lieutenant Governor and the attorney general. Other States do have, I think, secretaries of State. We do not. I do not advocate the director of revenue and

taxation being elected. Maybe if I were director of revenue and taxation for 7 years, I might be here, advocating that election.

Historically, the problems that we have had and struggled with, the relationship between the Governor and the highest legal office of the attorney general, will plague successors of the current attorney general. It plagued my predecessors, it plagued me, it is plaguing the current attorney general, and it will always be that situation.

I believe that the balance in the executive branch between the role of the Governor and the Lieutenant Governor will be very healthy and good for the Territory.

Mr. UNDERWOOD. Well, I certainly appreciate your testimony and the energy that you have devoted to this particular issue. I think it is a concern that is valid in that it raises a number of issues about how to frame a government, how to structure a government.

I think that normally, we think of those as kind of constitutional changes which should be done through local means. I still find it somewhat disconnected to argue that this is a good blow for self-government. Indeed it could conceivably be argued that this would be a good blow for good government on Guam. I appreciate my understanding from members of the committee that they are awaiting a consensus position on this particular issue, and to that extent, I have asked beyond the confines of this committee hearing for formal input from the Governor as well as members of the Judicial Council on Guam to see whether a consensus position can be arrived at on whether or not to proceed with this particular suggestion or perhaps to suggest an alternative as to how they might best implement.

Thank you very much.

Mr. FALCOMA. I was going to ask Senator Barrett-Anderson—was it Resolution 453 you indicated earlier?

Ms. BARRETT-ANDERSON. Resolution 433.

Mr. FALCOMA. Does it have the endorsement of the Governor?

Ms. BARRETT-ANDERSON. No, Mr. Chairman. This is strictly a legislative resolution. It does not go to the Governor. If bill 571 were to be adopted next month, then it would be subject the Governor's veto or passage.

Mr. FALCOMA. You know, as a matter of observation, it is kind of a mixed bag. In various jurisdictions among the States and even in the Territories, the question is always raised as to whether the Governor and the Lieutenant Governor should go on a joint ticket or should run separately. The proposal as endorsed by the Guam Legislature about electing an attorney general also raises some interesting questions. There is the possible scenario where the Governor might be a Democrat and the elected attorney general is a Republican.

You indicated earlier that now, as an elected officer, the attorney general will be coequal in this executive scenario, and I wonder if you might be asking for more problems than solutions to the problems.

In its ideal form as I understand it, the reason for electing an attorney general would be to provide more independence, especially as it relates to criminal prosecutions, civil lawsuits and the like.

But at the same time, it could be just as well reversed in terms of being political; then it becomes a political situation more so than resolving the problems. And I am not saying that Guam is any different. Some States have this kind of situation and others do not.

What you are suggesting here is that the Guam Legislature strongly feels that the attorney general should be elected. Is it for purposes of suggesting that the attorney general then become an independent prosecutor and not get involved in politics?

Ms. BARRETT-ANDERSON. Because the attorney general's office handles both civil and criminal prosecution, it would necessarily mean that the attorney general elected would have full control over criminal prosecution. It would not be called a territorial prosecutor or a D.A., but it would be under that.

Mr. FALCOMA. But you do not feel that the attorney general could also be playing politics because as an elected officer, he could also be selective in his prosecutions.

Ms. BARRETT-ANDERSON. You know, there are two sides of that issue, and I have been asked whether electing the attorney general will take politics out of it, and I have said absolutely not. I do not think that position can ever be out of politics.

However, because of the complete and absolute position of the Governor of Guam currently over the entire executive branch, all line agencies, including the Department of Law, both civil and criminal prosecutions, I believe that it would be healthy for the Territory to have a bifurcation of the control of the Governor over that office. And I cannot tell you what the problems will be there, but I can tell you what the problems have been—have been—and that is why this Guam Legislature so unanimously opted to extend the resolution to this Congress, because we know what the problems have been, and it must change.

Mr. FALCOMA. If there are problems of abuse or the situation where the attorney general does not follow the law, doesn't the legislature have the power of subpoena to have the attorney general be subjected to public scrutiny on the part of the members of the legislature?

Ms. BARRETT-ANDERSON. That is currently going on right now, Mr. Chairman, and I think that that is a poor use of legislative power and legislative time. I have not participated in those hearings. I believe what is going on right now is probably a management problem with the current attorney general, that he will survive. It took me 2 years, and I went through the same type of hearings.

I do not think you can legislate management. If there are true problems in the attorney general's office, those should be addressed by the legislature, but the problems that I am talking about have nothing to do with an oversight investigative-type hearing, subpoenas called. I am talking about the very structure within the executive branch of the relationships between the Governor and the attorney general and the Lieutenant Governor—primarily Governor and attorney general.

Mr. FALCOMA. I suppose in the same analogy that we find ourselves at the national level of our Government, where the Attorney General is nominated by the President subject to Senate confirmation, it does not take away the political situation where the

Attorney General is criticized publicly by the Members of Congress and even at times when she has to come before the Congress and justify herself in some of the decisions she has to make or has made that may not necessarily agree or disagree with Members both on the Senate and the House side.

The only point I am trying to make is that it could go both ways, whether you elect an attorney general, or even the current process where the attorney general is nominated, and I assume that this is how the process is right now in Guam, subject to legislative confirmation—is this how your attorney general is—

Ms. BARRETT-ANDERSON. There is not a nomination process, Mr. Chairman. It is purely an appointment at the discretion of the Governor, confirmed by the legislature.

Mr. FALDOMAEGA. Oh, I see, so the attorney general is not subject to legislative confirmation?

Ms. BARRETT-ANDERSON. The confirmation process, yes, but the nomination process is purely at the discretion of the Governor; he selects any candidate.

Mr. FALDOMAEGA. But still subject to confirmation by the legislature.

Ms. BARRETT-ANDERSON. Yes, sir.

Mr. FALDOMAEGA. OK. It is very ironic that Guam is an organized and unincorporated territory subject to—

Ms. BARRETT-ANDERSON. Unorganized, Mr. Chair; we are unorganized.

Mr. FALDOMAEGA. No; you are organized.

Ms. BARRETT-ANDERSON. I'm sorry. I guess maybe I am wishing we were unorganized, but we are organized.

Mr. FALDOMAEGA. You have been organized since 1950 as I recall.

Ms. BARRETT-ANDERSON. Yes. I stand corrected.

Mr. FALDOMAEGA. American Samoa is both unorganized and unincorporated, and yet we have a Constitution.

Ms. BARRETT-ANDERSON. I have often desired to have the same kind of status as American Samoa, and your control and self-government of your island.

Mr. FALDOMAEGA. I do not know about that; every time I have my friend, Mr. Stayman, testify before this committee, I keep feeling that we are being subjected to "big brother" here.

The question I wanted to ask Senator Cristobal is about the excess land. Let me put this scenario, and maybe Mr. Stayman will want to comment on this, too. Why not allow by law the transfer of excessive lands to Guam first and then let Guam deal with the Fish and Wildlife agency, but give at least the property rights to the Government of Guam, and the Fish and Wildlife Service can then come to the Government of Guam and say OK, let us work something out. But at least give the deed to the lands to the Government of Guam and its possession.

What do you think of that possible scenario?

Ms. CRISTOBAL. I strongly support that approach, Mr. Chairman. It has been discussed, apparently, in this Congress before that the Fish and Wildlife Service owns the land as well as protects the species that are on that piece of property. So yes, you are perfectly correct.

Mr. FALCOMA. I am going to suggest this to my good friend from Guam as a possible option.

Another question—and I am sorry that our friend from Fish and Wildlife is not here—they are so concerned about the birds and the bees, and I can understand that. Have they been successfully controlling the brown snake? Aren't we just as much concerned about the livelihood of the brown snake, too, since it is part of the habitat now?

Ms. CRISTOBAL. I understand that once we control the brown tree snake, those heartaches will go away. But there are a lot of heartaches that have to do with the lands, and those people are slowly dying, and they are not seeing their lands come back.

With respect to the snake, Mr. Faleomavaega, I think everybody is fully aware of it. I just arrived from New York this morning, and if I may, Mr. Chairman, I would also like to add as a point of information that I attended the United Nations Committee on Decolonization's plenary meetings on Monday, and two paragraphs of the report pertain to land. And if I may, it is just 6 lines long, and it says: "Noting that the people of the territory have called for reform in the program of the administering power with respect to the thorough, unconditional and expeditious transfer of land property to the people of Guam," and one of the operative clauses says, "Also request the administering power in cooperation with the territorial government to continue the transfer of land to the people of the territory and to take the necessary steps to safeguard their property rights." So I just thought I would add that as a point of information that in the international arena, land rights are also being discussed and the return of those lands, the Federal excess lands, to the people.

Mr. FALCOMA. Without objection, we will be more than happy to include the rest of the statement or the document you have submitted as part of the record.

Ms. CRISTOBAL. I appreciate that. Thank you, Mr. Chairman.

Mr. FALCOMA. Senator Barrett-Anderson, do you agree with the Lieutenant Governor's statement that a referendum should be held by the people of Guam first on this issue of the elected attorney general before Congress enacts a change in the Organic Act?

Ms. BARRETT-ANDERSON. Mr. Chairman, I am generally very much an advocate of the initiative process, referendum process, as the repeal of existing statute. I support initiatives generally for many, many issues in the Territory of Guam.

I would not oppose an initiative on this one. However, the unanimous position of my colleagues in the 23rd Guam Legislature, who are elected at-large in the Territory of Guam, having expressed their representative view that an elected attorney general is what the territory needs, I would say would not require or necessitate an initiative.

If, however, an initiative were to be required, I would fully support that.

Mr. FALCOMA. And I am sure you will also agree that there is a coequal branch of the government on behalf of the executive branch or the administration, that it also has the privilege of expressing its support or maybe even opposition. But I want to note



this, assuming that this is on behalf of Guam's administration that perhaps a referendum should be held first, before bringing this issue to the Congress.

Ms. BARRETT-ANDERSON. I can tell you that were I to go back to my colleagues in the 23rd Guam Legislature and request that we put this out to the electorate in the November election, I am sure that my colleagues—and I cannot speak for Senator Cristobal—but my hunch would be that my colleagues would say we have spoken in two manners, the resolution to Congress and this piece of legislation which is the bill that we are in full support of. So that I do not think the legislature would say that we will put a legislative submission on the November ballot.

The only way, therefore, that an initiative can get forth, or a plebescite, would be perhaps the executive branch to organize it and conduct it.

Mr. FALCOMAEGA. All right. The committee Chairman has some questions he would like to submit to Mr. Stayman's office, and I will have some questions also.

Mr. FALCOMAEGA. The gentleman from the Virgin Islands.

Mr. FRAZER. I was just listening very curiously because we tend to have had the same problems as relates to the attorney general. I would just like to ask Senator Anderson, did you find during your 7-year tenure that there were occasions where you felt that your independence was somewhat compromised because you had been nominated rather than elected, and is that one of the bases for this bill?

Ms. BARRETT-ANDERSON. Yes. My answer would be yes. And the clearest example in my written testimony is the enactment by the Governor of Guam of an anti-abortion law that was directly violative of the *Roe* case, and above my advice to the Governor and an official opinion that was issued that the bill that was pending before the Guam Legislature was unconstitutional as passed, the Governor of Guam did sign the bill into law.

Mr. FRAZER. Currently, we have in the Virgin Islands a situation whereby the attorney general is appointed, and I have found that in past administrations, there has been lack of understanding on behalf of Governors, who thought that the attorneys general were their personal counsel as opposed to someone appointed to be independent in an agency where you would expect that sort of independence.

Do you believe that the majority of the people in Guam support the proposition that this position should be elected as opposed to appointed?

Ms. BARRETT-ANDERSON. I have no significant data to show that. What I would testify to is my guess and my hunch, and I believe my guess would be that most of the people in Guam are eager to elect their own attorney general.

We have a good selection of graduates and local attorneys who have come back to Guam, having been educated here on the mainland, and I believe that were that position to be elected, we would have some very good local candidates.

In my written packet are some articles from the Pacific Daily News, which is our only general newspaper of circulation, and of the six people on the street who were asked about it, I believe four

of them said that, yes, we should have an elected attorney general. If that is a straw poll or an example, I believe that we would have a good majority of the people of Guam saying they do want to elect their attorney general.

There is a great amount of respect on the island for that position.

Mr. FRAZER. Mr. Chairman, I have just one further observation. It seems to me that, being from a territory also, at times, we find the Federal Government very heavy-handed in what they believe is in the better interest of the territories, such as this brown snake. We have had the same situation at home. I have yet to see the real value of this brown snake as opposed to people's right to use land. No one has convinced me that this snake serves any real purpose. Now, I am sure the conservationists are going to attack me for that, but they will do that if they so desire.

We have the same situation at home, and as the Congressman was suggesting, perhaps Guam and the territories would be in a better position if they first got title, then deal with Fish and Wildlife, as opposed to having Fish and Wildlife impose these crazy propositions, such as protecting some snake, making it impossible for people to properly use the land.

Do you find that there is at times a heavy-handed approach by the Federal Government in such things as protection of snakes?

Ms. BARRETT-ANDERSON. Historically, since our organized structure in the territory, the Federal Government has taken a heavy hand with regard to the Territory of Guam, as it has with all insular territories; there is no doubt.

Mr. FRAZER. Has Fish and Wildlife said what real value this snake possesses?

Ms. BARRETT-ANDERSON. Well, sir, what they are doing is creating the reserve not for the snake, but for the endangered species, the birds up there. Unfortunately, at the same time that they are preserving the birds, they are preserving the brown tree snake, which is the greatest predator to the extinction of our wildlife.

So perhaps if they opened up the reserve and gave it back to the people of Guam, the brown tree snake would be eradicated because we would chop their heads off.

Mr. FRAZER. Perhaps it is being considered by the majority of people in Guam to do so.

Thank you.

Mr. FALEOMAVAEGA. Senators, thank you both, and Governor Bordallo, Mr. Stayman representing the Department of the Interior.

The record will be kept open for submission of any additional materials that you wish to be made part of the record. The gentleman from Guam.

Mr. UNDERWOOD. I was just wondering if the Chairman would note that only witnesses from Guam made an appearance at the hearing and that that counts for something in considering the legislation.

Mr. FALEOMAVAEGA. Very good, Mr. Underwood.

This hearing is adjourned.

[Whereupon, at 4:07 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

104TH CONGRESS  
2D SESSION

# H. R. 3721

To establish the Omnibus Territories Act

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1996

Mr. FALEOMAYAEAGA introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To establish the Omnibus Territories Act

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Omnibus Territories Act of 1996”.

6 (b) **TABLE OF CONTENTS.**—

TITLE I—REPEAL THE REQUIREMENT OF SEPARATE BALLOTS

TITLE II—AMERICAN SAMOA STUDY COMMISSION ACT

TITLE III—AMERICAN SAMOA ECONOMIC DEVELOPMENT ACT

TITLE IV—INSULAR AREAS CONSOLIDATION ACT

TITLE V—AMERICAN SAMOA CAPITAL INFRASTRUCTURE FUND

## TITLE VI—GUAM LAND RETURN ACT

## TITLE VII—AMENDMENTS TO THE REVISED ORGANIC ACT OF THE VIRGIN ISLANDS

## TITLE VIII—COMMISSION ON THE ECONOMIC FUTURE OF THE VIRGIN ISLANDS

1   **TITLE I—REPEAL THE REQUIREMENT OF**  
2                   **SEPARATE BALLOTS**

3   **SEC. 101. REPEAL OF SEPARATE BALLOT REQUIREMENT.**

4       Section 2(a) of the Act entitled “An Act to provide  
5   that the unincorporated territories of Guam and the Vir-  
6   gin Islands shall each be represented in Congress by a Del-  
7   egate to the House of Representatives” approved April 10,  
8   1972 (48 U.S.C. 1712(a)), is amended by striking “, by  
9   separate ballot and”.

10   **TITLE II—AMERICAN SAMOA STUDY**  
11                   **COMMISSION ACT**

12   **SEC. 201. SHORT TITLE.**

13       This title may be cited as the “American Samoa  
14   Study Commission Act”.

15   **SEC. 202. CONGRESSIONAL FINDINGS.**

16       The Congress finds that—

17           (1) the islands of Tutuila and Manua, and cer-  
18       tain other islands that compose American Samoa,  
19       were ceded by the chiefs of the islands to the United  
20       States by two treaties or deeds of cession which were  
21       submitted to the United States Congress on April  
22       10, 1900, and July 16, 1904;

1           (2) American Samoa's status as an unorganized  
2           and unincorporated territory of the United States,  
3           and American Samoa's political relationship to the  
4           United States, are not clearly defined in any single  
5           document;

6           (3) there is a need for a comprehensive study  
7           and review of the historical and legal basis of Amer-  
8           ican Samoa's political relationship with the United  
9           States, including—

10           (A) a comprehensive report on American  
11           Samoa's present political relationship with the  
12           United States, as compared to other relation-  
13           ships such as independence, commonwealth,  
14           free association and covenant; and

15           (B) an examination of whether the treaties  
16           or deeds of cession created trust obligations to  
17           American Samoa on the part of the United  
18           States;

19           (4) the economic and social needs of American  
20           Samoa are substantially affected by the nature of  
21           American Samoa's political relationship with the  
22           United States; and

23           (5) there is a need for a comprehensive study  
24           also of Swains Island and its historical relationship  
25           with the Tokelau Island Group.

1   **SEC. 203. ESTABLISHMENT.**

2           There is established a commission to be known as the  
3   “American Samoa Study Commission Act”.

4   **SEC. 204. DUTIES.**

5           (a) IN GENERAL.—It shall be the duty of the Com-  
6   mission—

7           (1) to study and evaluate all the factors that  
8           led to American Samoa’s historical and present po-  
9           litical relationship with the United States, includ-  
10          ing—

11                  (A) the events that led to the cession to  
12                  the United States of the islands that compose  
13                  American Samoa; and

14                  (B) the constitutions, statutes, treaties,  
15                  and agreements that affect American Samoa’s  
16                  political relationship with the United States;

17           (2) to document and report on the nature of  
18           American Samoa’s political relationship with the  
19           United States; to document and also report on such  
20           political relationships as independence, common-  
21           wealth, free association and covenant; and to docu-  
22           ment and report on whether the deeds of cession cre-  
23           ated trust obligations to American Samoa on the  
24           part of the United States;

1           (3) to report on whether a single document is  
2           needed to set forth American Samoa's political rela-  
3           tionship with the United States; and

4           (4) to study and evaluate the impact of Amer-  
5           ican Samoa's political status and relationship with  
6           the United States (as determined by the Commission  
7           under paragraph (2)) on the economic and social  
8           needs of American Samoa and its residents.

9           (5) to study and report on whether the 1900  
10          and 1904 Instruments of Cession were indeed trea-  
11          ties or deeds and how such instruments are recog-  
12          nized under international law.

13          (b) CONSULTATION.—The Commission shall, to the  
14          maximum extent practicable, consult with American  
15          Samoans in carrying out the duties of the Commission  
16          under subsection (a).

17   **SEC. 205. MEMBERSHIP.**

18          (a) NUMBER AND APPOINTMENT.—The Commission  
19          shall be composed of five members appointed as follows:

20               (1) Three members appointed by the Secretary  
21          of Interior, including—

22                       (A) One member appointed from among  
23                       three individuals nominated by the legislature  
24                       of the Territorial government of American  
25                       Samoa and

1 (B) One member appointed from among  
2 three individuals nominated by the Governor of  
3 American Samoa.

4 (2) One member appointed by the Speaker of  
5 the United States House of Representatives.

6 (3) One member appointed by the President of  
7 the United States Senate.

8 (b) TERMS.—Each member shall be appointed for the  
9 life of the Commission.

10 (c) BASIC PAY.—

11 (1) RATES OF PAY.—Except as provided in  
12 paragraph (2), each member of the Commission  
13 shall be paid, to the extent of amounts made avail-  
14 able in appropriations Acts, \$150 for each day (in-  
15 cluding travel time) during which the member is en-  
16 gage in the actual performance of the duties of the  
17 Commission.

18 (2) PROHIBITION OF COMPENSATION OF FED-  
19 ERAL EMPLOYEES.—Except as provided in sub-  
20 section (d), members of the Commission who are  
21 full-time officers or employees of the United States  
22 or the Territorial government of American Samoa  
23 may not receive additional pay, allowances, or bene-  
24 fits by reason of their service on the Commission.



1 (d) TRAVEL EXPENSES.—Each member shall receive  
2 travel expenses, including per diem in lieu of subsistence,  
3 in accordance with sections 572 and 5703 of title 5, Unit-  
4 ed States Code.

5 (e) QUORUM.—Three members of the Commission  
6 shall constitute a quorum, but a lesser number may hold  
7 hearings.

8 (f) CHAIRPERSON; VICE CHAIRPERSON.—The Chair-  
9 person and Vice Chairperson of the Commission shall be  
10 elected by the members.

11 (g) MEETINGS.—

12 (1) INITIAL MEETINGS.—Not later than the ex-  
13 piration date of the 90 day period beginning on the  
14 date of the enactment of this Act, the Secretary of  
15 the Interior shall call the initial meeting of the mem-  
16 bers of the Commission.

17 (2) SUBSEQUENT MEETINGS.—The Chairperson  
18 or a majority of the members of the Commission  
19 shall call any meeting of the Commission that occurs  
20 after the meeting called under paragraph (1).

21 **SEC. 206. STAFF AND SUPPORT SERVICES.**

22 (a) DIRECTOR.—The Commission shall have a direc-  
23 tor, who shall be appointed by the Commission.

24 (b) STAFF.—Subject to rules prescribed by the Com-  
25 mission, the Chairperson of the Commission may appoint

1 and fix the pay of personnel as the Chairperson considers  
2 appropriate.

3 (c) APPLICABILITY OF CERTAIN CIVIL SERVICE  
4 LAWS.—The Director and staff of the Commission may  
5 be appointed without regard to the provisions of title 5,  
6 United States Code, governing appointments in the com-  
7 petitive service, and may not be paid without regard to  
8 the provisions of chapter 51 and subchapter III of chapter  
9 53 of such title relating to classification and General  
10 Schedule pay rates, except that an individual so appointed  
11 may not receive pay in excess of the maximum rate of  
12 basic pay payable for GS-16 of the General Schedule.

13 (d) EXPERTS AND CONSULTANTS.—Subject to rules  
14 prescribed by the Commission, the Chairperson of the  
15 Commission may procure temporary and intermittent  
16 services under section 3109(b) of title 5, United States  
17 Code, but at rates for individuals not to exceed \$150 per  
18 day.

19 (e) ADMINISTRATIVE SUPPORT SERVICES.—Upon  
20 the request of the Commission, the Administrator of Gen-  
21 eral Services shall provide to the Commission, on a reim-  
22 bursable basis, the administrative support services nec-  
23 essary for the Commission to carry out its responsibilities  
24 under this Act.

1 **SEC. 207. POWERS OF COMMISSION.**

2 (a) **HEARINGS.**—

3 (1) **IN GENERAL.**—The Commission may, for  
4 the purpose of carrying out this Act, hold hearings,  
5 sit and act at times and locations, take testimony,  
6 and receive evidence as the Commission considers  
7 appropriate.

8 (2) **LOCATION OF CERTAIN HEARINGS.**—

9 (A) **REQUIRED HEARINGS.**—The Commis-  
10 sion shall conduct at least 1 hearing at any lo-  
11 cation on each of—

- 12 (i) Tutuila;  
13 (ii) Ofu;  
14 (iii) Olosega; and  
15 (iv) Tau.

16 (B) **OTHER HEARINGS.**—The Commission  
17 may conduct at least 3 separate hearings in the  
18 United States at locations where significant  
19 numbers of American Samoans reside.

20 (3) **NOTICE.**—The Commission shall provide  
21 notice to the public of the hearings referred to in  
22 paragraphs (1) and (2), including information re-  
23 garding the date, topic and location of the meeting,  
24 and shall take other actions as the Commission con-  
25 siders necessary to obtain, to the maximum extent  
26 practicable, public participation in the hearings.

1 (b) DELEGATION OF AUTHORITY.—Any member or  
2 agent of the Commission may, if authorized by the Com-  
3 mission, take any action that the Commission is author-  
4 ized to take by this Act.

5 (c) OBTAINING OFFICIAL DATA.—

6 (1) IN GENERAL.—The Commission may secure  
7 directly from any Federal agency information nec-  
8 essary to enable it to carry out this Act. Upon the  
9 request of the Chairperson of the Commission, the  
10 head of the Federal Agency shall furnish the infor-  
11 mation to the Commission.

12 (2) EXCEPTION.—Paragraph (1) shall not  
13 apply to any information that the Commission is  
14 prohibited to secure or request by another law.

15 (d) MAIL.—The Commission may use the United  
16 States mail in the same manner and under the same con-  
17 ditions as the other Federal agencies.

18 **SEC. 208. REPORTS.**

19 (a) DRAFT REPORT.—

20 (1) IN GENERAL.—Not later than the expira-  
21 tion of the 1-year period beginning on the date of  
22 the enactment of this Act, the Commission shall pre-  
23 pare and publish a draft report containing the find-  
24 ings, conclusions and recommendations of the Com-  
25 mission.

(2) DISTRIBUTION.—The Commission shall distribute such report to appropriate Federal and American Samoan agencies and shall make such report available to members of the public upon request.

(3) SOLICITATION OF COMMENTS.—The Commission shall solicit written comments from the Federal and American Samoan agencies and other persons to which copies of such report are distributed under paragraph (2).

(b) FINAL REPORT.—Not later than the expiration of the 9-month period beginning on the date of the publication of the report required by subsection (a)(1), the Commission shall submit to the President and the Congress a final report, which shall include—

(1) a detailed statement of the findings and conclusions made by the Commission after consideration of the comments received by the Commission under subsection (a)(3);

(2) the recommendations of the Commission for legislative and administrative actions that the Commission determines to be appropriate; and

(3) copies of all written comments received by the Commission under subsection (a)(3).

1 **SEC. 209. DEFINITIONS.**

2 For the purpose of this Act:

3 (1) The term “American Samoan” has the  
4 meaning given the term “native American Samoan”  
5 in section 4 of Public Law 100–571 (16 U.S.C.  
6 410qq–3).

7 (2) The term “Commission” means the Amer-  
8 ican Samoa Study Commission established in section  
9 3.

10 **SEC. 210. AUTHORIZATION OF APPROPRIATIONS.**

11 There is authorized to be appropriated such sums as  
12 are necessary to carry out the provisions of this Act.

13 **SEC. 211. TERMINATION.**

14 The Commission shall terminate not later than the  
15 expiration of the 60-day period beginning on the date on  
16 which the Commission submits its final report under sec-  
17 tion 8.

18 **TITLE III—AMERICAN SAMOA ECONOMIC**  
19 **DEVELOPMENT ACT OF 1995**

20 **SEC. 301. SHORT TITLE.**

21 This title may be cited as the “American Samoa Eco-  
22 nomic Development Act of 1996”.

23 **SEC. 302. FINDINGS.**

24 The Congress finds that—

25 (1) funding for the United States territory of  
26 American Samoa has been based on the joint resolu-

tion entitled "Joint Resolution to provide for accepting, ratifying, and confirming cessions of certain issues of the Samoan group to the United States, and for other purposes", as amended (48 U.S.C. 1661), with commitments being made on a yearly basis;

(2) American Samoa is locally self-governing with a constitution of its own adoption and the direct election of the Governor since 1977;

(3) the territory of American Samoa has had difficulty in planning and implementing comprehensive and sustainable infrastructure based solely on annual ad hoc grants; and

(4) the territory of American Samoa and the United States would benefit from a multi-year funding commitment which promotes economic development and self-sufficiency, and requires compliance with financial management accounting standards, the establishment of semiautonomous public utility authorities utilizing cost-recovery principles, and the phaseout of Federal subsidies for Government operations.

**SEC. 303. AUTHORIZATION OF FUNDING.**

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of the Interior for the Government of American Samoa \$10,000,000 for each of fiscal

1 years 1998 through 2003. Such amounts shall be used for  
2 construction and repair of capital assets of American  
3 Samoa.

4 (b) MULTI-YEAR AVAILABILITY OF APPROPRIA-  
5 TIONS.—Amounts not expended in the year appropriated  
6 shall remain available until expended.

7 **TITLE IV—INSULAR AREAS**  
8 **CONSOLIDATION ACT**

9 **SEC. 401. SHORT TITLE.**

10 This title may be cited as the “Insular Areas Consoli-  
11 dation Act of 1996”.

12 **SEC. 402. ADDITIONS TO TERRITORY OF AMERICAN SAMOA.**

13 (a) IN GENERAL.—The Territory of American Samoa  
14 shall include Baker Island, Jarvis Island, and Howland  
15 Island.

16 (b) JURISDICTION.—The islands specified in sub-  
17 section (a) shall be subject to the jurisdiction of the Terri-  
18 tory of American Samoa to the same extent as and in the  
19 same manner that such jurisdiction applies to all other  
20 areas within the territory.

21 (c) RIGHTS OF THE UNITED STATES.—The inclusion  
22 of islands, appurtenant reefs, and territorial waters in the  
23 Territory of American Samoa by this section shall be sub-  
24 ject to existing rights of use, ownership, management, and  
25 operation by the Government of the United States.



1 **SEC. 403. CONFORMING AMENDMENTS.**

2 **SEC. 404. USE OF ISLANDS, REEF, AND ATOLLS.**

3 No provision of this title shall be construed as con-  
4 gressional approval, suggestion, or intent to alter, change,  
5 affect, or reduce the current use of any of the islands,  
6 reef, or atolls specified in section 302(a).

7 **SEC. 405. ADDITIONS CONTINGENT UPON ACCEPTANCE BY**  
8 **TERRITORY OF AMERICAN SAMOA.**

9 (a) ACCEPTANCE BY TERRITORY OF AMERICAN  
10 SAMOA.—Sections 302 and 303 shall not take effect un-  
11 less the Governor and Legislature of American Samoa cer-  
12 tify to the President that the Territory of American  
13 Samoa accepts all of the islands, reefs, and atolls referred  
14 to in section 302(a).

15 (b) PROCLAMATION BY PRESIDENT.—Not later than  
16 30 days after receiving the last certification described in  
17 subsection (a), the President shall issue a proclamation  
18 of the new geographical jurisdiction of American Samoa.

19 (c) EFFECTIVE DATE.—Sections 302 and 303 shall  
20 take effect upon the issuance of the proclamation de-  
21 scribed in subsection (b).

22 **SEC. 406. DEFINITIONS.**

23 For purposes of this title:

24 (1) BAKER ISLAND.—The term “Baker Island”  
25 means all of the islands and appurtenant reefs at  
26 the parallel of 0 degrees, 11 to 13 minutes, of lati-

1 tude north of the Equator and at the meridian of  
 2 176 degrees, 27 to 30 minutes, of longitude west of  
 3 Greenwich, England, and the territorial waters of  
 4 such islands and reefs.

5 (2) HOWLAND ISLAND.—The term “Howland  
 6 Island” means all of the island and appurtenant  
 7 reefs at the parallel of 0 degrees, 45 to 50 minutes,  
 8 of latitude north of the Equator and at the meridian  
 9 of 176 degrees, 37 to 39 minutes, of longitude west  
 10 of Greenwich, England, and the territorial waters of  
 11 such islands and reef.

12 (3) JARVIS ISLAND.—The term “Jarvis Island”  
 13 means all of the islands and appurtenant reefs at  
 14 the parallel of 0 degrees, 22 to 24 minutes, of lati-  
 15 tude south of the Equator and at the meridian of  
 16 160 degrees, 0 to 3 minutes, of longitude west of  
 17 Greenwich, England, and the territorial waters of  
 18 such islands and reef.

19 **TITLE V—AMERICAN SAMOA CAPITAL**  
 20 **INFRASTRUCTURE FUND**

21 **SEC. 501. SHORT TITLE.**

22 This title may be cited as the “American Samoa Cap-  
 23 ital Infrastructure Fund Act”.

1 **SEC. 502. AMENDMENT OF SUBSECTION 703(a) OF PUBLIC**  
2 **LAW 94-241.**

3 The second sentence of subsection 703(a) of Public  
4 Law 94-241, as amended, is hereby amended to read as  
5 follows: "Funds provided under Section 702 will be consid-  
6 ered to be local revenues when used as the local share re-  
7 quired to obtain federal programs and services."

8 **TITLE VI—GUAM LAND RETURN ACT**

9 **SEC. 601. SHORT TITLE.**

10 This Act may be cited as the "Guam Land Return  
11 Act".

12 **SEC. 602. OPPORTUNITY FOR GUAM TO ACQUIRE EXCESS**  
13 **REAL PROPERTY IN GUAM.**

14 The Organic Act of Guam (48 U.S.C. 1421 et seq.)  
15 is amended by adding at the end the following new title:

16 "SEC. xx. (a) At least 180 days before transferring  
17 to any Federal agency excess real property located in  
18 Guam, the Administrator of General Services shall notify  
19 the government of Guam that the property is available  
20 under this section.

21 "(b) The Administrator shall transfer to the govern-  
22 ment of Guam all right, title, and interest of the United  
23 States in and to excess real property located in Guam,  
24 by quit claim deed and without reimbursement, if the gov-  
25 ernment of Guam, within 180 days after receiving notifica-  
26 tion under subsection (a) regarding the property, notifies

1 the Administrator that the government intends to acquire  
2 the property under this section.

3 “(c) For purposes of this action, the term ‘excess real  
4 property’ means excess property (as that term is defined  
5 in section 3 of the Federal Property and Administrative  
6 Services Act of 1949, as in effect on the date of enactment  
7 of the Guam Land Return Act) that is real property.”.

8 **SEC. 603. RELEASE OF LANDS FROM CONDITION ON DIS-**  
9 **POSAL BY GUAM.**

10 (a) IN GENERAL.—Section 818(b)(2) of Public Law  
11 96–418 (94 Stat. 1782), relating to a condition on dis-  
12 posal by Guam of lands conveyed to Guam by the United  
13 States, shall have no force or effect and is repealed.

14 (b) EXECUTION OF INSTRUMENTS.—The Secretary  
15 of the Navy and the Administrator of General Services  
16 shall execute all instruments necessary to implement this  
17 section.

18 **TITLE VII—AMENDMENTS TO THE RE-**  
19 **vised ORGANIC ACT OF THE VIRGIN**  
20 **ISLANDS.**

21 **SEC. 701. SHORT TITLE.**

22 This Act may be cited as the “Revised Organic Act  
23 of the Virgin Islands, amended”.

1 **SEC. 702. AMENDING THE DEFINITION OF “TEMPORARY AB-**  
2 **SENCE”.**

3 Section 7(a) of Public Law 90-496 (82 Stat. 839),  
4 as amended, is further amended by adding at the end  
5 thereof “As used in this section, the term ‘temporary ab-  
6 sence’ shall not be construed as being physically absent  
7 from the territory while on official Government business.”.

8 **SEC. 703. AMENDING SECTION 3 OF PUBLIC LAW 94-392.**

9 Section 3 of Public Law 94-392 (90 Stat. 1195), as  
10 amended, is further amended as follows:

11 (1) By inserting “hereinafter” between “obligations” and “issued”.

12 (2) By deleting “priority for payment” and inserting in lieu thereof “a parity lien with every other  
13 issue of bonds or other obligations hereinafter issued  
14 for payment”.

15 (3) By deleting “in the order of the date of  
16 issue”.

17 **SEC. 704. CERTAIN BONDS EXEMPTED FROM PROVISIONS**  
18 **OF SECTION 149 OF THE INTERNAL REVENUE**  
19 **CODE OF 1986, AS AMENDED.**

20 The provision of section 149(d)(3)(A)(i)(I) and  
21 149(d)(2) of the Internal Revenue Code of 1986, as  
22 amended, shall not apply to bonds issued—

23 (1) by an authority created by statute of the  
24 Virgin Islands legislature, the proceeds of which will

1 be used to advance refund certain bonds issued by  
2 such authority on July 8, 1992; or

3 (2) by an authority created by statute of the  
4 Virgin Islands legislature, the proceeds of which will  
5 be used to advance refund certain bonds issued by  
6 such authority on November 3, 1994.

7 **SEC. 705. APPLICATION OF AMENDMENTS IN SECTIONS 703**  
8 **AND 704.**

9 The amendments made by sections 703 and 704 shall  
10 apply to obligations issued on or after the date of enact-  
11 ment of this title.

12 **TITLE VIII. COMMISSION ON THE ECO-**  
13 **NOMIC FUTURE OF THE VIRGIN IS-**  
14 **LANDS**

15 **SEC. 801. ESTABLISHMENT AND MEMBERSHIP.**

16 (a) There is hereby established a Commission on the  
17 Economic Future of the Virgin Islands (the "Commis-  
18 sion"). The Commission shall consist of six members ap-  
19 pointed by the President, two of whom shall be selected  
20 from nominations made by the Governor of the Virgin Is-  
21 lands. The President shall designate one of the members  
22 of the Commission to be Chairman.

23 (b) In addition to the six members appointed under  
24 paragraph (1), the Secretary of the Interior shall be an  
25 ex-officio member of the Commission.

1 (c) Members of the Commission appointed by the  
2 President shall be persons who by virtue of their back-  
3 ground and experience are particularly suited to contrib-  
4 ute to achievement of the purposes of the Commission.

5 (d) Members of the Commission shall serve without  
6 compensation, but shall be reimbursed for travel, subsist-  
7 ence and other necessary expenses incurred by them in  
8 the performance of their duties.

9 (e) Any vacancy in the Commission shall be filled in  
10 the same manner as the original appointment was made.

11 **SEC. 802. PURPOSE AND REPORT.**

12 (a) The purpose of the Commission is to make rec-  
13 ommendations to the President and Congress on the poli-  
14 cies and programs necessary to provide for a secure and  
15 self-sustaining future for the local economy of the Virgin  
16 Islands through 2020 and on the role of the Federal Gov-  
17 ernment in providing for that future. In developing rec-  
18 ommendations, the Commission shall—

19 (1) solicit information and advice from persons  
20 and entities that the Commission determines have  
21 expertise to assist the Commission in its work;

22 (2) examine and analyze historical data since  
23 1970 on expenditures for infrastructure and serv-  
24 ices;

1           (3) analyze the sources of funds for such ex-  
2       penditures;

3           (4) assemble relevant demographic and eco-  
4       nomic data, including trends and projects for the fu-  
5       ture; and

6           (5) estimate future needs of the Virgin Islands,  
7       including needs for capital improvements, edu-  
8       cational needs and social, health and environmental  
9       requirements.

10       (b) The recommendations of the Commission shall be  
11       transmitted to the President, the Committee on Energy  
12       and Natural Resources of the United States Senate and  
13       the Committee on Resources of the United States House  
14       of Representatives no later than December 1, 1997. The  
15       recommendations shall be accompanied by a report that  
16       sets forth the basis for the recommendations and includes  
17       an analysis of the capability of the Virgin Islands to meet  
18       projected needs based on reasonable alternative economic,  
19       political and social conditions in the Caribbean, including  
20       the opening in the near future of Cuba to trade, tourism  
21       and development.

22       **SEC. 803. POWERS.**

23       (a) The Commission may—



1           (1) hold such hearings, sit and act at such  
2 times and places, take such testimony and receive  
3 such evidence as it may deem advisable;

4           (2) use the United States mail in the same  
5 manner and upon the same conditions as other de-  
6 partments and agencies of the United States;

7           (3) enter into contracts or agreements for stud-  
8 ies and surveys with public and private organizations  
9 and transfer funds to Federal agencies to carry out  
10 such aspects of the Commission's functions as the  
11 Commission determines can best be carried out in  
12 such manner; and

13           (4) incur such necessary expenses and exercise  
14 such other powers as are consistent with and reason-  
15 ably required to perform its functions.

16       (b) The Secretary of the Interior shall provide such  
17 office space, furnishings and equipment as may be re-  
18 quired to enable the Commission to perform its functions.  
19 The Secretary shall also furnish the Commission with such  
20 staff, including clerical support, as the Commission may  
21 require and shall provide to the Commission financial and  
22 administrative services, including those relating to budget-  
23 ing, accounting, financial reporting, personnel and pro-  
24 curement.

1       (c) The President, upon request of the Commission,  
2 may direct the head of any Federal agency or department  
3 to assist the Commission and if so directed such head  
4 shall—

5           (1) furnish the Commission to the extent per-  
6 mitted by law and within available appropriations  
7 such information as may be necessary for carrying  
8 out the functions of the Commission and as may be  
9 available to or procurable by such department or  
10 agency; and

11          (2) detail to temporary duty with the Commis-  
12 sion on a reimbursable basis such personnel within  
13 his administrative jurisdiction as the Commission  
14 may need or believe to be useful for carrying out its  
15 functions, each such detail to be without loss of se-  
16 niority, pay or other employee status.

17 **SEC. 804. CHAIRMAN.**

18       Subject to general policies that the Commission may  
19 adopt, the Chairman of the Commission shall be the chief  
20 executive officer of the Commission and shall exercise its  
21 executive and administrative powers. The Chairman may  
22 make such provisions as he may deem appropriate author-  
23 izing the performance of his executive and administrative  
24 functions by the staff of the Commission.

1 **SEC. 805. APPROPRIATIONS.**

2       There are authorized to be appropriated such sums  
3 as may be necessary to carry out the purposes of this sec-  
4 tion.

5 **SEC. 806. TERMINATION.**

6       The Commission shall terminate three months after  
7 the transmission of the report and recommendations under  
8 subsection (b)(2).

○

STATEMENT OF ALLEN P. STAYMAN, DIRECTOR, OFFICE OF INSULAR AFFAIRS,  
DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE SUBCOMMITTEE ON NATIVE  
AMERICAN AND INSULAR AFFAIRS, REGARDING WATER ISLAND, ELECTION OF  
GUAM'S ATTORNEY GENERAL, AND H.R. 3721, A BILL TO ESTABLISH THE  
OMNIBUS TERRITORIES ACT, JULY 24, 1996

Mr. Chairman and members of the Subcommittee on Native American and Insular Affairs, I am pleased to appear before you for this oversight hearing on Water Island, election of Guam's Attorney General, and H.R. 3721, the Omnibus Territories Act of 1996.

WATER ISLAND TRANSFER

Mr. Chairman, the Department of the Interior has been the owner and lessor of Water Island, United States Virgin Islands, for more than forty years. Since before the expiration of the master lease in 1992, the Department has sought to dispose of its interest in the island. The process has been long and arduous -- involving the master lessee, residential sublessees, Sprat Bay Corporation, the Government of the Virgin Islands, and the courts. We are confident, however, that the process is coming to a close, with a fair and reasonable result.

On May 23, 1996, in letters to Virgin Islands Governor, Roy L. Schneider, Water Island sublessees and other interested parties, the Department outlined its plan for disposing of its interest in Water Island.

- o Each sublessee will have an opportunity to purchase fee simple title to the subleased land on which his or her Water Island residence is located for \$17,500 an acre.
- o The Government of the Virgin Islands will be given fee simple title to non-subleased portions of Water Island for public purposes in exchange for assumption of certain responsibilities by the Government of the Virgin Islands including the provision of public municipal services, cleanup from storm damage, and dock and ferry services.

In resolution of a suit by the master lessee against the Department, before Judge Roger Andewelt, United States Court of

Federal Claims, the parties submitted a formal settlement agreement by which the Department will pay the master lessee \$7.5 million for the lessee's possessory interest in Water Island. Revised settlement stipulations are expected to become effective on August 2, 1996, in order to give interested parties an opportunity to seek an injunction against the master lease holder to prevent a transfer of certain funds.

With the Judge's expected approval of the settlement on August 2, 1996, we anticipate moving forward with formal offers to the sublessees for sale to them of their respective parcels of land, and the transfer to the Government of the Virgin Islands of the remaining land on the island. We believe that this long Water Island transfer process is drawing to a close. We are proud of the fair and reasonable result that will benefit the sublessees, the Government of the Virgin Islands, and the Federal government.

#### GUAM ATTORNEY GENERAL

The Legislature of Guam in Resolution No. 433 (LS) requests that the Organic Act of Guam be amended to require election of the Attorney General of Guam. At present, the Attorney General is appointed by and serves at the pleasure of the Governor of Guam.

I believe that the issue of appointment or election of the Attorney General is a local self-government issue, which should be decided in Guam. We have been given the opinion of the legislature. The Subcommittee may wish to solicit the opinion of the Governor and Judiciary, or even the people of Guam.

Because this is strictly a self-government issue, the Department of the Interior takes no position on the matter, at this time. We would, however, likely support a position based on consensus from Guam.

#### H.R. 3721 -- OMNIBUS TERRITORIES ACT OF 1996

##### **Title I -- Delegate Balloting**

Title I would repeal the requirement that a separate ballot be used in elections of delegates from Guam and the Virgin Islands. The rationale for this title is that the requirement of a separate ballot impedes voting and tabulation efficiency. The Administration agrees and has no objection to title I.

It should be noted, however, that title I deals only with the ballots for delegates from Guam and the Virgin Islands. The election of the delegate from American Samoa is treated separately in Public Law 95-556 (48 U.S.C. 1731, 1732). Title I would not affect American Samoa's ballot for delegate, which would remain separate from other ballots in the territory.

## **Title II -- American Samoa Study Commission**

Title II would establish a five-member American Samoa study commission to conduct a comprehensive study of American Samoa's political status. The proposed commission would (1) study and evaluate all factors that led to American Samoa's political relationship with the United States, (2) document the nature of that relationship, (3) report on alternative political relationships such as independence, commonwealth, free association and "covenant," (4) document whether or not the deeds of cession created a trust relationship, (5) report on whether or not a single document is needed to set forth American Samoa's political relationship with the United States, (6) study and evaluate the effect of American Samoa's political status on the economic and social needs of American Samoa and its residents, and (7) study and report on whether or not the instruments of cession are treaties or deeds, and the recognition given them in international law.

While Administration policy discourages the establishment of commissions, I would like to address issues relating more directly to political status.

First, it is unclear what the ultimate purpose of the commission's activities would be. Therefore, it is difficult to determine the appropriateness and extent of the Federal role in such a commission.

Second, the commission's duties suggest a need for change in American Samoa's political status. I believe that initial discussions on political status should be undertaken at the local level, in American Samoa, and that the Federal government should become involved only after some local consensus has been established.

For example, both Guam and the Virgin islands established local status commissions to examine such questions. In Guam's case, its locally established commission process led to a local plebiscite and a petition to the Congress. In the Virgin Islands' case, the locally established commission developed a plan and held a plebiscite. However, because no local consensus emerged from the electorate, the process ended before Federal involvement.

I recommend that any such status evaluation process be initiated locally, in American Samoa, and that Federal involvement be delayed until there is a local consensus for change.

## **Title III -- American Samoa Development Act of 1995**

Title III includes findings that laud the benefits of multi-year funding, and a proposal authorizing up to \$10 million a year for fiscal years 1998 through 2003 for capital development. However, no additional language is included that would guarantee that funds

will actually be appropriated for American Samoa capital infrastructure in any of the years 1998 through 2003. Thus, while the authorization is multi-year, appropriations need not be. Since 1929, American Samoa has received Federal funds under an unlimited and on-going authorization. A second, and limiting, authorization is unnecessary.

Of greater significance is the fact that a true multi-year funding source was identified by the Department and became law earlier this year as section 118 of Public Law 104-134. Section 118 re-allocates Northern Mariana Islands mandatory Covenant grants as a source of multi-year capital funding for all territories. While this act does not earmark specific amounts for American Samoa, it is anticipated that American Samoa, the territory with the greatest need, will receive the largest share of the Covenant funds available for capital infrastructure. The Administration, in response to a letter from Delegate Faleomavaega, estimated that American Samoa will receive a minimum of \$9.1 million annually from this guaranteed source, beginning with fiscal year 1998.

Because this law is already on the books, the Administration opposes enactment of title III as unnecessary.

#### **Title IV -- Insular Areas Consolidation Act**

Under title IV (which includes several technical errors), Howland, Baker, and Jarvis islands, in the Pacific, would become a part of the territory of American Samoa. They are currently under the jurisdiction of the Department of the Interior. The bill, in sections 402(c) and 404, would recognize and preserve existing Federal uses, ownership, and management, and other current uses of these islands when transferred.

Last year, a hearing was held on the Insular Areas Consolidation Act contained in title III of H.R. 602, which would transfer numerous Pacific islands, including Howland, Baker, and Jarvis to the state of Hawaii. Additionally, on June 25, 1996, Hawaii Senator Daniel Akaka introduced a similar bill. The Department of the Interior supported enactment of title III of H.R. 602, conditioned on a clarification that territorial waters and the jurisdiction of states extend only three miles from the state's fastland baseline.

The proposal before us today, favoring American Samoa, is in conflict with H.R. 602, which would favor Hawaii. The Department's primary concern is for the protection of existing Federal interests in these islands and the surrounding sea, not which political jurisdiction would receive these islands. Recognizing that the Constitution, in Article IV, section 3 clause 2, gives the Congress plenary authority over the territory of the United States, we believe that the Congress is the proper institution for determining the disposition of Howland, Baker, and Jarvis, as well as other

American Pacific islands. If and when such a determination is made, the Administration requests that attention be paid to the views expressed in departmental testimony on H.R. 602 regarding the territorial sea and exclusive economic zone, and that any legislation should be amended accordingly.

#### **Title V -- American Samoa Capital Infrastructure Fund**

Funds appropriated under the Commonwealth of the Northern Mariana Islands (CNMI) Covenant were subject to the second sentence of section 703(a) of the Covenant which states:

Funds provided under Section 702 will be considered to be local revenues of the Government of the Northern Mariana Islands when used as the local share required to obtain federal programs and services.

Section 118 of Public Law 104-134 shifts a major portion of this CNMI funding to other territories. The amendment in title V is intended to allow other territorial recipients of the redirected Covenant funds to utilize such funds as the local share for the purposes of federal program and services.

The Administration endorses the concept of title V, clarification of federal program matching. We do suggest, however, that, to avoid possible confusion, the provision be re-drafted to conform to language adopted earlier this month by the Senate Committee on Appropriations. (See attachment.)

#### **Title VI -- Guam Land Return Act**

Section 602 of title VI, as currently drafted, authorizes Guam to acquire federal excess lands on the island at no cost and ahead of Federal agencies. Such land acquisition is conditioned on Guam exercising its option within 180 days after notice by the General Services Administration that the property is excess to the needs of a transferring Federal agency. In essence, section 602 provides Guam with the right of first refusal on all Federal excess lands situated on Guam.

#### **Interior Concerns**

The Department has serious concerns with section 602 as currently drafted. By directing the Federal government to automatically transfer all right, title and interest in Federal excess lands to the Government of Guam, the Congress in section 602 would waive provisions of the National Environmental Policy Act (NEPA) and the Endangered Species Act, as well as other Federal laws. The



Department of Defense and other agencies have additional concerns. Section 602 also makes no provision for habitat conservation and endangered species protection in the event of outright transfer to the Government of Guam. Finally, section 602 would contravene the terms of the settlement agreement that established the overlay refuge in lieu of designation of critical habitat for a number of threatened and endangered species. For these reasons, we strongly oppose section 602, as introduced.

**A Break with the Past --  
The Orange County Experience Can Be Guam's Experience**

The Administration believes that economic development and habitat protection are not mutually exclusive. This Administration has worked hard with states and private landowners to find innovative solutions that allow development activities while protecting fish and wildlife, including threatened and endangered species. Guam can benefit from these innovative approaches initiated by this Administration.

Orange County, California provides a recent demonstration of the new attitude and effective approach to reconciling development and habitat preservation. The Irvine Company in Orange County and the California Resources Agency met with Secretary Babbitt in 1993 to aid species preservation and give certainty to real estate developers. This effort led to the completion of a habitat conservation plan developed under the Endangered Species Act that involved Federal, state, county, and municipal governments, private land developers, and other property owners. The result was a consensus process in Orange County to protect the overall ecosystem for a number of species by setting aside habitat in one place in return for permission to develop and build in another. This type of innovative and consensus building approach could serve as a positive example to those who are interested in protecting the natural heritage of Guam while seeking economic opportunities.

**The Future -- Federal Land Return and Reconciliation**

The Orange County Habitat Conservation Plan was developed under sections 10(a) and 4(d) of the Endangered Species Act and deals with private lands. In Guam, a habitat conservation plan on private and Guam owned lands could be merged with a habitat protection agreement on Federal lands to provide protection for all threatened or endangered species on Guam. The salient point is attitude: the Department of the Interior seeks a reconciliation that meets both development and habitat protection needs.

The Department will work hard with the military, Government of Guam, and private interests to develop innovative measures for protecting threatened and endangered species at the same time as we seek to protect the significant interests of Guam in future unneeded military lands.

The Department is also prepared to enter into discussions to resolve these concerns based on two principles. First, any unneeded Federal lands that are outside the boundary of the Guam National Wildlife Refuge and overlay lands could be transferred to the Government of Guam, provided that such transfers are in accordance with National Environmental Policy Act, and other Federal laws.

Second, a process could be established to develop a habitat protection agreement, in conjunction with the Government of Guam the Department of Defense, and private interests, that could (1) maximize the amount of unneeded Federal land to go to the Government of Guam, and (2) provide adequate protection to threatened and endangered species and their habitat in accordance with the Endangered Species Act. If the parties were to approve such a habitat protection agreement, then lands would be transferred, owned, and managed in accordance with the terms and conditions of such agreement. With such an agreement in place, it may be possible to transfer unneeded Federal land to Guam without amending the Federal Property and Administrative Services Act of 1949.

This planning approach would allow all three parties to work together to determine, after considering all lands on Guam, adequate habitat needed to meet threatened and endangered species requirements. It is possible that private lands, Government of Guam lands with compatible uses, and military lands not expected to become excess or surplus may meet the habitat needs of many endangered species. Other lands could then be freed for other uses.

We look to Guam for an expression of interest in developing a habitat conservation plan for private and Guam owned lands in conjunction with a habitat conservation agreement on Federal lands.

#### **Brooks Amendment**

Section 603 would repeal section 818(b)(2) of Public Law 96-418, which requires the repatriation of profits to the Federal government that are attributable to lands donated by the Federal government to the Government of Guam. Because profits go to the Federal government, there is little incentive for Guam to develop the lands to their highest potential. The repealer in section 603 would allow the Government of Guam to benefit from the efforts it expends on developing land transferred from the Federal government.

The Administration supports enactment of section 603.

**Title VII**  
**Amendments to the Revised Organic Act of the Virgin Islands**

Subsection (a) of title VII is intended to deal with the transfer of the authority of the Governor of the Virgin Islands when the Governor is absent from the Virgin Islands. My testimony last month on section 2 of H.R. 3634 dealt with the same subject but included the lieutenant governor. I supported enactment of the H.R. 3634 provision. I recommend that the temporary absence issue can best be resolved by deleting sections 701 and 702 of H.R. 3721 and inserting in lieu thereof section 2 of H.R. 3634.

Sections 703 through 705 deal with the bonding authority of the Virgin Islands when its bonds are secured by the cover over of Federal excise taxes on rum. The provisions would allow the Virgin Islands to issue parity debt, rather than priority debt. Current law gives greater protection to earlier issuances of debt over later issuances, with the result that later debt is subject to increased interest and fees. We understand that most local jurisdictions now issue parity debt instruments. The bonding provisions of title VII would place the Virgin islands on a footing similar to other communities.

The Administration has no objection to the enactment of sections 703 and 705 of title VII. However, section 704 would amend the Internal Revenue Code to provide special relief for the Virgin Islands with regard to two outstanding tax-exempt bond issues. The provision would allow these two bond issues to be advance refunded, essentially doubling the Federal tax subsidy for each of the two bond issues. We object to both the special relief character of the provision, and to the increased Federal tax subsidy, which would have a paygo impact. We note that the comparable bonding provision in H.R. 3634 does not contain the defeasance provision of section 704 of H.R. 3761. We recommend that section 704 of title VII be omitted.

**Title VIII**  
**Commission on the Economic Future of the Virgin Islands**

Title VIII would establish a six-member commission to evaluate future economic options for the Virgin Islands. One concern is the possibility that United States restriction on American tourism to Cuba will eventually be lifted. A re-opening of American tourism to Cuba would result in stiff competition for the Virgin Islands' tourism industry.

The Administration supports the objective of title VIII, which is to analyze and plan for the future economic needs of the Virgin Islands. The thrust of Administration policy on good government is generally against the creation of new commissions.

Also, there is a question of timing and funds. We believe that it would be difficult, if not impossible, to establish a commission and produce the desired recommendations by the December 31, 1997 deadline provided in the bill. Alternatively, we recommend that the Office of Insular Affairs and Governor Schneider explore the possibilities of an agreement for technical assistance to achieve the purposes of title VIII. We believe that this approach would be faster, less expensive, and could utilize available funds. We look forward to working with interested members of Congress and Governor Schneider regarding the development of a plan of action for this important effort.

Mr. Chairman, we applaud the diligence of your subcommittee in examining insular issues. We look forward to enactment of legislation that will benefit the islands.

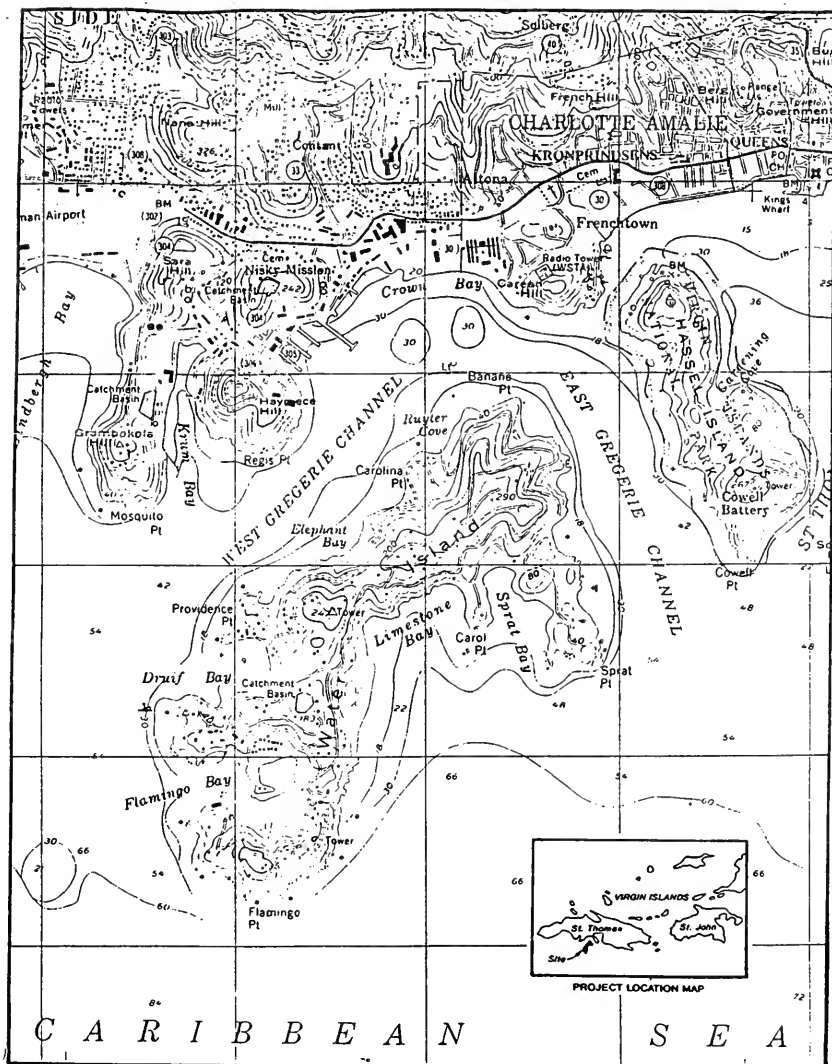
**SEC. 502. COVENANT AMENDMENT.**

In the second sentence of subsection (a) of section 703 of the Northern Mariana Islands Covenant contained in section 1 of Public Law 94-241, strike the words "of the Government of the Northern Mariana Islands".

**INCLUDED IN THE OVERSIGHT PLAN  
OF THE COMMITTEE ON RESOURCES  
Approved February 8, 1995**

**DISPOSAL OF WATER ISLAND IN THE VIRGIN ISLANDS**

The fourth largest island in the Virgin Islands was leased by the Department of the Interior to an individual in 1951, who subleased parcels. The lease expired in 1991 and the Bush Administration consummated agreements of sale with the various homeowners. The Clinton Administration has sought to renegotiate the agreements of sale, incurring considerable time and expense to all parties. The Subcommittee views Water Island as one more example of residual matters which should have been resolved by the Department years ago and warrants Federal oversight to bring matter to closure.



## Written Statement of

A. P. LUTALI

Before the

HOUSE COMMITTEE ON RESOURCES  
SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRSOn H.R. 3721  
THE OMNIBUS TERRITORIES ACT OF 1996

July 24, 1996

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to submit this written statement in support of Titles II, III, and V of H.R. 3721, the Omnibus Territories Act of 1996, which pertain to American Samoa. I regret that prior commitments prevent me from testifying in person at the hearing, and I ask that this statement be placed in the hearing record as the official position of the American Samoa Government.

I commend Delegate Eni F. H. Faleomavaega for introducing the Omnibus Territories Act, which contains several initiatives of potential benefit to our islands. I also want to thank Chairman Elton Gallegly for scheduling this hearing so that the Subcommittee can focus on the present and future needs of American Samoa.

In general, the American Samoa Government supports Titles II, III, and V of the proposed Omnibus Territories Act, all of which are directed at our territory. In this statement, we will explain the reasons for our support and will offer some modest suggestions for improvement of the bill.

TITLE II  
AMERICAN SAMOA STUDY COMMISSION ACT

Title II of the bill would create the American Samoa Study Commission, consisting of three members appointed by the Secretary of the Interior and two members appointed respectively by the Speaker of the U.S. House of Representatives and the President of the U.S. Senate. Two of the members appointed by the Secretary of the Interior would be selected from among candidates nominated respectively by the Governor and Legislature of American Samoa.

The Commission would be directed to study and report on the historical and legal basis of American Samoa's relationship with the United States and to make recommendations on options for future political status. Public hearings would be held on each



of our major islands and at three locations in the United States where significant numbers of American Samoans reside. The Commission would submit a report to the President and the Congress containing its findings, conclusions, and recommendations.

We believe the work of the Commission would advance the understanding of our political history and our options for the future, both among our own people and among policymakers in the Federal Government. The Commission's efforts would benefit from the conduct of local public hearings in our islands and in the American Samoan communities in the United States. The composition of the Commission is properly balanced to reflect both local and federal interests.

As we interpret Title II, the conclusions and recommendations of the Commission would be entirely advisory and would not be binding on American Samoa or on the Federal Government. To avoid any misunderstanding, we suggest that the non-binding character of the Commission's report be expressly stated in the text of the bill or in the Committee report which accompanies the bill.

### TITLE III AMERICAN SAMOA ECONOMIC DEVELOPMENT ACT

Title III of the bill would authorize the appropriation through the Secretary of the Interior of \$10 million per year over a six-year period for the construction and repair of capital assets of American Samoa. We support this much-needed authority for a multi-year program to address the growing infrastructure deficiency in our islands. To make Title III even more effective, we suggest extending the effort to ten years by authorizing the appropriation of \$10 million per year through fiscal year 1997.

The construction and repair effort envisioned by Title III is consistent with my recent letter to President Clinton proposing a major Rehabilitation Program for American Samoa. Such a program is overdue because our islands are suffering from a decade of relative neglect by the United States. Over the past ten years, annual U.S. appropriations have steadily declined while our population has doubled and our needs for basic facilities have multiplied.

The decline in U.S. support has been exacerbated by three devastating hurricanes in the short span of eight years. These storms, each more destructive than any in the preceding 100 years, literally flattened our islands three times. Our hospital, school buildings, and road system were severely damaged, and many essential facilities have not been adequately repaired or rebuilt.

A ten-year program of construction and repair would address current needs while laying a foundation for greater self-sufficiency in the future. We are pleased to report that a new garment manufacturing project has recently begun production in American Samoa, providing more than 400 new jobs in the local economy. This represents the first new major export industry in our territory since the 1960's. The multi-year development program contemplated by Title III of the bill could provide the basic modern infrastructure necessary to attract and sustain more private industry in American Samoa.

#### TITLE V AMERICAN SAMOA CAPITAL INFRASTRUCTURE FUND

Title V of the bill clarifies that funds provided to the insular areas from the Capital Infrastructure Fund will be considered to be local revenues when used as the local share required to obtain federal programs and services. In the FY96 Interior Appropriation, Congress created the multi-year Capital Infrastructure Fund for the insular areas by redirecting funds previously appropriated for another purpose. The redirected funds had been eligible to serve as the local share for federal matching requirements, but this matching eligibility was not specifically carried over to the Capital Infrastructure Fund.

The clarification in Title V will maximize the ability to develop necessary infrastructure with the limited amounts available from the Capital Infrastructure Fund. It appears that the clarification is consistent with the original congressional intent. In this regard, we understand that the Senate Committee on Appropriations has included a similar clarification in its version of the Interior Appropriation bill for FY97 (H.R. 3662).

#### CONCLUSION

In conclusion, I want to restate our support for Titles II, III, and V of H.R. 3721 and our appreciation to Delegate Faleomavaega and Chairman Gallegly for their interest and for their efforts. We respectfully urge the Subcommittee to approve these titles and to give favorable consideration to the modest improvements which we have proposed.

## SUPPLEMENTARY SHEET

House Committee on Resources  
Subcommittee on Native American & Insular AffairsH.R. 3721  
Omnibus Territories Act of 1996  
July 24, 1996Witness: Honorable A. P. Lutali  
Governor of American SamoaAddress: Office of the Governor  
Pago Pago, American Samoa 96799

Telephone: 011-684-633-4116

Fax: 011-684-633-2269

## Topical Outline:

1. The American Samoa Study Commission Act (Title II) should be adopted with suggested clarification.
2. The American Samoa Economic Development Act of 1995 (Title III) should be adopted with suggested extension.
3. The American Samoa Capital Infrastructure Fund (Title V) should be adopted as clarification of congressional intent.

TESTIMONY  
BEFORE THE HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON NATIVE AMERICAN & INSULAR AFFAIRS  
7/24/96

BY  
SENATOR ELIZABETH BARRETT-ANDERSON  
23RD GUAM LEGISLATURE

Mr. Chairman and Members of the Committee:

Hafa Adai and Good Afternoon! I appear before this Committee to testify on Resolution #433, as unanimously adopted by the 23rd Guam Legislature requesting a Congressional amendment to the Organic Act of Guam authorizing the Territory to elect its Attorney General. Attached to this testimony is a section by section analysis for use by the Committee.

May I begin by thanking the Committee for scheduling Resolution #433 for public hearing. The Guam Legislature recognizes the tremendous workload of the Subcommittee. We greatly appreciate the Subcommittee's early attention.

The Attorney General of Guam is a position created by local statute (5 Guam Code Annotated §30101), appointed by the Governor and confirmed by the Guam Legislature. The Attorney General is the head of the Department of Law having jurisdiction over both civil and criminal prosecution, and is the chief legal officer to the government of Guam. It is a cabinet level position, the head of an executive line agency, and functions completely under the purview of the Governor of Guam in accordance with the Governor's Organic Act authority over all line agencies in the government of Guam. (48 U.S.C. §1421)

Why an elected Attorney General? Empowering the people of the Territory to elect their Attorney General is a statement of greater self-government on the part of the people of Guam. Self-government is not just a concept involved in a political status change. It can be a

realistic expression of a people to decide through the power of voting how it seeks to govern itself. Voting for the chief legal officer of the Territory is a realistic step toward the goal of greater self-government in much the same manner that voting for the Governor is an expression of self-government. Electing an Attorney General is not an unrealistic concept which seeks to create new legal theories of self-government rather, it is a concept that is steep in legal history evolving from English Rule where the Attorney General was appointed by the King, to the Jacksonian Era which established the rule of direct election of state officials. Today 46 states elect their Attorney General under constitutional guidelines.

The people of Guam expect their Attorney General to protect their interest above all else. An appointed Attorney General, unfortunately, must respond to a great extent to the concerns of the Governor.

The Attorney General of Guam has historically suffered from this dilemma. The people of Guam are frankly tired of the constant criticisms focused on the very position which the people demand the highest degree of legal integrity.

As Attorney General of Guam from 1987 to 1994, I served in an appointed capacity. No better example of a conflict of interest between an appointed Attorney General, and the Governor of Guam can be illustrated than the enactment by Governor Joseph F. Ada of the anti-abortion law over my stern advice and official Opinion that the legislation was unconstitutional under *Roe*. As an elected Attorney General I would not have hesitated to immediately sue the Governor to enjoin the law. As an appointed Attorney General I was placed in an unbearable conflict. The law fortunately was quickly challenge in a 1983 Jane Doe law suit. The Attorney General's Office was conflicted from representing the Governor based upon my Opinion, and therefore, outside counsel was hired to defend the Governor. Two years later the Court of Appeals for the Ninth Circuit held the law was unconstitutional. The government was ordered to pay treble attorneys fees to the plaintiff's counsel. The people of Guam should not be expected to pay for both the challenge and defense of any litigation so clearly unconstitutional on its face. An elected Attorney General would assure that such a case does not reoccur.

Finally, a companion measure, Bill #571, introduced by Senator Vincente C. Pangelinan, proposes to enact a statute calling for an

elected Attorney General upon amendment of the Organic Act. This measure has been reported out favorably to pass by the Committee on Judiciary, Criminal Justice & Environmental Affairs. Each of these pieces of legislation is an unequivocal statement of bipartisan support for an elected Attorney General. Attached to this testimony are articles and news releases also suggesting strong community support.

We urge the Subcommittee to review carefully Resolution #433, and considered its overwhelming benefit to the Territory's growth and self-government. This is a "can-do" issue for the people of Guam.

Respectfully submitted

  
ELIZABETH BARRETT-ANDERSON

Attachments:

## SECTION BY SECTION

## SECTION 1.

§1422. This Section of the Organic Act establishes the "Constitutional" positions within the Executive Branch. The amendment adds the position of Attorney General to that of the Governor and Lieutenant Governor. It establishes the qualifications for anyone seeking the position of Attorney General. It further exempts the Attorney General's Office from budgetary management of the Governor, which is important to preserve among co-equal elected offices. The Section specifically creates the Office of the Attorney General, administered by an elected Attorney General, and further delineates the powers and duties of that position.

The Guam Legislature specifically amended the Resolution during debate on the floor to clearly and unequivocally provide that the position be elected. This was done for several reasons: to avoid potential litigation as to the intent of Congress to create a co-equal executive branch position, and to prevent future legislative repeal.

The Section provides for an impeachment process by referendum in the same manner as the Governor and Lieutenant Governor. It also provides for filing of a vacancy in the position due to a temporary or permanent absence of the incumbent.

§1422(c). This is one of the most critical provisions dealing with the Governor's power over the Executive Branch. It is also the most litigated provision of the Organic Act. Resolution #433 adds an amendment to the sentence dealing with the establishment of a merit system for the government of Guam. In *Haeuser v. Department of Law* (Court of Appeals for the Ninth Circuit C.A. 94-16987; argued May 9, 1996) the Court of Appeals questioned the government regarding the intent of Congress in adopting that certain phrase "as far as practicable" in reference to the creation of a merit system by the local Legislature. It is not unusual that the term "as far as practical" as opposed to "as far as practicable" is used in Congressional drafting. There being no legislative history regarding the intent of Congress in the use of the term, it was left to the parties to refer to

old case law. The Court has not yet rendered its decision, however, it would not be inappropriate for Congress to better clarify that the Legislature be empowered to create a merit system governing the selection, appointment and removal of employees therein, and to further create such other position(s) not intended to be within the merit system. (Appellant/Appellee Briefs Available)

## SECTION 2.

§1421g(c). This Section repeals the authority to create an Office of the Public Prosecutor. It was intended that this section would allow for the creation of an elected Public Prosecutor. The Section, however, did not specifically provide for election, and it conflicted with the Governor's authority under §1422 over heads of all agencies. The earlier amendments to provide for an elected Attorney General with jurisdiction over criminal cases moots the issue of a Public Prosecutor. The Public Prosecutor should therefore be repealed.



PACIFIC SUNDAY NEWS, April 14, 1996

# Guam voters are ready to pick an attorney general

By BEN C. PANGELINAN

We have passed the mileposts of an elected Legislature in the early '50s, elected governor in the '70s and the most recent mile marker we have come upon is the appointment of our own Supreme Court justices.

The next milepost on the horizon is the establishment of an elected attorney general as a "constitutional position" within the territory. These are not new paths, but rather trails that have been blazed by other jurisdictions as they traveled the road to political maturity.

Political maturity can be best described as the empowerment of the electorate to hold its leaders directly accountable. An elected attorney general does not mean the absence of politics from the selection process, but rather that the politics and the selection process are directly controlled by the people via the ballot box. I believe that the electorate of Guam is equipped, responsible and mature enough to exercise this power in deciding their own attorney general.

Across our nation, 43 states have vested this power directly with the voters. Of the remaining seven states, Tennessee's is appointed by the State Supreme Court and Maine's is selected by the Legisla-

ture. The rest, including Alaska, Hawaii, Wyoming, New Jersey, New Hampshire and all of the flag territories and the District of Columbia, have attorney generals appointed by their governors. Chocking the mileposts on the pilgrimage road to political maturity, it is worth noting that those states and all of the territories where internal self-government is a recent phenomena, have not relegated the power to determine the attorney general to their electorates.

Guam and its voters are prepared to break out of this pack. The attorney general must represent the common good and public interest.

The introduction of Bill No. 571 is not the final step, but an emphatic advancement toward full political maturity. It serves to refresh us on our journey until we can come upon the ultimate oasis of democracy of self-determination. Together with the efforts of Congressman Underwood in Congress to introduce and vigorously lobby for the amendatory measure, I believe that time is fast approaching when we will be able to decide upon a popular attorney general.

*Sen. Ben C. Pangelinan is a member of the 23rd Guam Legislature.*

## Loyalty is not to a person

By JESS E. EDEJER

Whether or not the attorney general is popularly elected or appointed by the governor, the position is expected to serve the government, not necessarily work for the personal interest of the governor.

The Judiciary Act of 1789, which created the position of the Attorney General (AG) of the United States, defines this position as the chief law officer of the government. He is appointed by the president subject to confirmation by a screening legislative body. Duties are to advise and represent the government in important legal matters and to initiate and supervise legal proceedings that affect the welfare of the nation. The position of AG was later made applicable to states and territories at which levels the position may either be appointive or elective.

Patterned after the tasks of the AG of the U.S., the attorney general of any state, or territory, whether elected or appointed, serves as the chief law officer of the government. In Guam he is the head of the Law Department. As such, he is,

like all other department heads, appointed by the governor, subject to confirmation by the legislature.

Whether or not the AG, or any public official for that matter, is elected or appointed does not matter much. If he knows his job, he should be able to prove to anybody around him that his loyalty while performing his tasks as a professional is owed not to any particular person but to the government in general. And the government should always serve the interest of the greater number of the people, for the greater number of the people, and by the greater number of the people.

A vigilant citizenry can steer the AG's performance the way it should be even if he is appointed by the governor. Perhaps, we can save Congress' precious time for more urgent legislation if we leave this as such as is and show that we in Guam are capable of self-governing within the framework of the Organic Act.

*Jess E. Edejer is a finance controller from Mangilao.*

April 14, 1996



## Provides a check and balance

By ELIZABETH BARRETT-ANDERSON

The 1977 Guam Constitutional Convention recommended Guam's Constitution should provide for an elected attorney general:

"Section 6. Attorney General. a) The attorney general shall be a qualified voter of Guam, a bona fide resident of Guam for at least two years immediately preceding the date of taking office, and licensed to practice law before the Supreme Court of Guam. The attorney general shall be elected at a regular general election on a non-partisan ballot and shall serve for a term of four years or until a successor is elected and qualified."

Guam's constitution was never ratified or adopted by the people, instead in 1984 we opted to negotiate for a political status change: Commonwealth.

While the Commission on Self-Determination continues its quest, I am a firm believer that we should strive to attain those bits and pieces of greater self-government in any manner that we can. Amend the Organic Act to autho-

### COMMENT

rize the people of Guam to elect an attorney general is "doable," and an easily understood concept of most states which elect their own attorney general.

The strength of a good attorney general is not dependent on whether he or she is appointed or elected. So what is the benefit of an elected attorney general? I believe it is in the ability of that person to become a real advocate for the people.

In instances where a state agency may exceed its authority, or act outside the scope of the law, elected attorneys general have resorted to litigation to halt unauthorized action by the state agency. Indeed, in my tenure as attorney general of Guam, I worked with several state attorneys general who were embroiled in litigation against state agencies they normally would be representing, and in some cases directly against their governors. An elected attorney general pro-

vides an "internal" check and balance in the administration of the executive branch of government.

When the attorney general and the governor do not see eye to eye, there is no avoiding a show down. An appointed attorney general stands in a precarious position; sticking to his/her guns will inevitably mean loss of a job. An elected attorney general does not face the potential of unemployment until the next election.

In working for seven and a half years with many state attorneys general, I came to the belief early on that Guam was politically ready for an elected attorney general. Someone who has the strength and fortitude to take on the legal challenges and problems that affect our island, and to do so with fierce dedication.

As an appointed attorney general, I was not in a position to espouse this view; as a senator I am in a position to make a difference for Guam.

Sen. Elizabeth Barrett-Anderson is a senator in the 23rd Guam Legislature

## NEXT SUNDAY'S FORUM TOPIC

# Should we push to elect Guam's attorney general?

Recent controversy over political interference in the attorney general's office has prompted many people to question its impartiality and who this entity really works for. This latest event recalls other situations, such as the attorney general representing the governor in a lawsuit against the Director of the Department of Education, where the office appears to be more an attorney for the governor than an advocate for all the people. Most attorney generals across the nation are elected by the voters instead of being appointed by the governor, as is the case on Guam.

A unanimous resolution passed last month by the Guam Legislature petitions Congress to amend the Organic Act to allow Guam to elect the attorney general. Another bill, that compliments this resolution, is pending.

This week Sen. Elizabeth Barrett-Anderson will meet with the House Committee on Native American and Insular Affairs in Washington to discuss this issue. So our opinion topic for next Sunday discusses:

**Does continued controversy about political interference detract from the attorney general's credibility? Do you believe an independent, elected attorney general would provide a better service to the citizens of Guam?** Send your thoughts — in about 500 words — to the *Pacific Sunday News*, Pacific News Building in Agaña, or fax them to (671) 477-3079. Articles can also sent via e-mail to [voices@pdnguam.com](mailto:voices@pdnguam.com). Typed opinions are preferred, but neatly written articles also will be accepted. Call us if you are interested in discussing this week's topic with our editorial board. For information, call 477-9711-16, extension 415.

**DEADLINE FOR ARTICLES:** 5 p.m., Thursday, July 25.

PACIFIC DAILY NEWS, Friday, June 28, 1996

## Senator urges election of Guam AG

### ■ Organic Act:

Amendment sponsored by Sen. Barrett-Anderson sent to Washington

By BERNADETTE STERNE  
Daily News Staff

One island senator wants to change the Organic Act so residents would elect Guam's attorney general.

Sen. Elizabeth Barrett-Anderson sponsored a resolution which passed earlier this month to amend the Organic Act of Guam to provide for an elected attorney general.

"Guam is ready, and capable of

electing its own attorney general," the Guam Paper/Ordal republican said.

"I see it as a healthy step toward self-government to elect an attorney general who would be answerable to the people."

Barrett-Anderson is a former attorney general who was appointed to that position by former Gov. Joseph Ada.

The senator sent the Organic Act amendments to Del. Robert A. Underwood, hoping to have the amendments included in bills that would give Guam first claim to any transfer of excess military property, she said.

Underwood told the *Daily*

"I see it as a healthy step toward self-government to elect an attorney general who would be answerable to the people."

— SEN. ELIZABETH BARRETT-ANDERSON

*News* in a telephone interview yesterday that he doesn't think Barrett-Anderson's amendments will make it to the floor.

And, Underwood said, he would like to discuss the amendments with Gov. Carl Gutierrez and Guam's Judicial Council before taking any action.

"I wouldn't see any objection




to it from my part, but I just want to make sure that I secure the opinion of all the moving parts, so to speak," Underwood said.

Barrett-Anderson said she hopes that amendments will be addressed before the end of this Congress, or maybe the next.





"I don't think there is a great rush to do it right now," she said.

**TWENTY-THIRD GUAM LEGISLATURE  
1996 (SECOND) Regular Session**

Bill No. 571  
Introduced by:

V. C. Pangelinan   
J. Won Pat-Borja   
M.C. Charfauoy   

---

F. Camacho   
H.A. Cristobal   
L. Leon Guerrero   
A. Santos 

**AN ACT TO REPEAL AND REENACT  
SECTION 30101, TITLE 5 GCA RELATIVE  
TO CREATING AN ELECTIVE ATTORNEY  
GENERAL POSITION.**

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

Section 1. Legislative Statement. Section 1422C, Title 48 U.S. Code Annotated, as amended grants the territory of Guam the authority to provide by law the manner of appointment of heads of the executive agencies and instrumentalities. This mandate is a recognition by the United States Congress of the political maturity of the people of Guam and their proven ability to manage the affairs of the territorial government.

The Legislature further finds that the Attorney General, as head of the Department of Law, has a unique and enormous responsibility. All agencies and instrumentalities of government frequently request the legal opinion of the Attorney General to use that as a guideline for official actions. This legal opinion has at times been deemed the force and effect of law until otherwise reversed by the Court of competent jurisdiction in an appropriate legal action.

Because of the nature of the responsibility of the Attorney General, it is necessary to relieve him or her from any pressure that may be imposed by the appointing authority, by institutionalizing the post of Attorney General as an elected position to best serve the interest of the territory and the people of Guam.

1       Section 2. 5 GCA §30101 is hereby repealed and reenacted  
2 to read:

3       "Section 30101. Attorney General. The Department of Law of the  
4 government of Guam shall be administered by the Attorney General of  
5 Guam, who shall be elected at the same time and manner as the Governor  
6 and Lieutenant, and his term of office shall be the same as that of the  
7 Governor. The term of office of the incumbent holder shall expire co-  
8 terminous with the term of office of the Governor unless sooner  
9 terminated."

TWENTY-THIRD GUAM LEGISLATURE  
1996 (SECOND) Regular Session

Resolution No. 433 (LS)

\*

Introduced by:

E. Barrett-Anderson

J. P. Aguon

T. C. Ada

A. C. Blaz

J. M. S. Brown

F. P. Camacho

M. C. Charfauros

H. A. Cristobal

M. Forbes

A. C. Lamorena V

C. Leon Guerrero

L. Leon Guerrero

T. S. Nelson

S. L. Orsini

V. C. Pangelinan

D. Parkinson

J. T. San Agustin

A. L. G. Santos

F. E. Santos

A. R. Unpingco

J. Won Pat-Borja

Relative to requesting Congressman Robert Underwood to introduce a measure before Congress relative to the Office Of The Attorney General by amending Sections §1421g(C), §1421h and §1421i of Title 48 of the United States Code, the Organic Act of Guam.

1 BE IT RESOLVED BY THE LEGISLATURE OF THE TERRITORY OF  
2 GUAM:

1 WHEREAS, presently the Attorney General of Guam is an executive  
2 branch agency head appointed by the Governor of the Territory in accordance  
3 with local statutory authority creating the Department of Law, a line agency  
4 of the government of Guam (5 Guam Code Annotated §30101); and

5 WHEREAS, the Twenty-Third Guam Legislature finds that in an effort  
6 to attain greater self-government, and to provide for a check and balance  
7 within the Executive Branch, the Territory should establish the post of an  
8 elected Attorney General; and

9 WHEREAS, the Organic Act of Guam, which does not presently provide  
10 the government of Guam authority to establish an elected Attorney General,  
11 would in effect cause an automatic repeal of any local law enacted  
12 inconsistent with the Organic Act; and

13 WHEREAS, historically Guam has recognized the need to create a  
14 constitutional office of the Attorney General, and to have that office elected  
15 (1977 Guam Constitutional Convention, at §6 "Attorney General", Guam  
16 Draft Constitution); and

17 WHEREAS, as the Commission on Self-Determination continues its  
18 quest for greater self-government, it would be consistent with such concept  
19 to allow the people of the Territory to determine the manner and process for  
20 selection of its Attorney General, to include elective office; now, therefore, be  
21 it

22 RESOLVED, by the Twenty-Third Guam Legislature, that Guam's  
23 Delegate to Congress, Congressman Robert Underwood is requested to  
24 petition the United States Congress to expeditiously amend the Organic Act  
25 of Guam to provide for the creation of the position of Attorney General, and  
26 to grant the people of the Territory of Guam authority to determine the  
27 manner of selection of the position of Attorney General.

1 To that end, the following amendments to the Organic Act of Guam are  
2 hereby requested:

3 Section 1. Section 1422 of Title 48 United States Code is amended to  
4 read:

5 '§1422. Governor; Lieutenant Governor; Attorney General; Powers,  
6 duties. The executive power of Guam shall be vested in [an executive officer  
7 whose official title shall be the "Governor of Guam."] a governor, lieutenant  
8 governor and an attorney general. The Governor of Guam, together with  
9 the Lieutenant Governor, shall be elected by a majority of the votes cast by  
10 the people who are qualified to vote for the members of the Legislature of  
11 Guam. The Governor and Lieutenant Governor jointly shall be chosen by the  
12 casting by each voter of a single vote applicable to both offices. If no  
13 candidate receives a majority of the votes cast in any election, on the  
14 fourteenth day thereafter a runoff election shall be held between the  
15 candidates for Governor and Lieutenant Governor receiving the highest and  
16 second highest number of votes cast. The first election for Governor and  
17 Lieutenant Governor shall be held on November 3, 1970. Thereafter,  
18 beginning with the year 1974, the Governor and Lieutenant Governor shall be  
19 elected every four years at the general election. The Governor and  
20 Lieutenant Governor shall hold office for a term of four years and until their  
21 successors are elected and qualified.

22 No person who has been elected Governor for two full successive terms  
23 shall again be eligible to hold that office until one full term has intervened.

24 The term of the elected Governor and Lieutenant Governor shall  
25 commence on the first Monday in January following the date of election.

26 No person shall be eligible for election to the office of Governor, [or]  
27 Lieutenant Governor or Attorney General unless he is an eligible voter and



1 has been for five consecutive years immediately preceding the election a  
 2 citizen of the United States and a bona fide resident of Guam and will be, at  
 3 the time of taking office, at least thirty years of age, and in the case of the  
 4 office of the Attorney General has been admitted to practice before the  
 5 Supreme Court of Guam and in good standing at the time of his election.

6 The Governor shall have general supervision and control of all the  
 7 departments, bureaus, agencies, and other instrumentalities of the executive  
 8 branch of the government of Guam, with the exception of the office of the  
 9 Attorney General which shall be independent from the general supervision of  
 10 the Governor. He may grant pardons and reprieves and remit fines and  
 11 forfeitures for offenses against local laws. He may veto any legislation as  
 12 provided in this chapter. He shall appoint, and may remove, all officers and  
 13 employees of the executive branch of the government of Guam, except as  
 14 otherwise provided in this or any other Act of Congress, or under the laws of  
 15 Guam, and shall commission all officers he may be authorized to appoint. He  
 16 shall be responsible for the faithful execution of the laws of Guam and the  
 17 laws of the United States applicable in Guam. Whenever it becomes  
 18 necessary, in case of disaster, invasion, insurrection, or rebellion, or imminent  
 19 danger thereof, or to prevent or suppress lawless violence, he may summon  
 20 the posse comitatus or call out the militia or request the assistance of the  
 21 senior military or naval commander of the Armed Forces of the United States  
 22 in Guam, which may be given at the discretion of such commander if not  
 23 disruptive of, or inconsistent with, his federal responsibilities. He may, in  
 24 case of rebellion or invasion, or imminent danger thereof, when the public  
 25 safety requires it, proclaim the island, insofar as it is under the jurisdiction of  
 26 the government of Guam, to be under martial law. The members of the

1 Legislature shall meet forthwith on their own initiative and may, by two-  
2 thirds vote, revoke such proclamation.

3 The Governor shall prepare, publish, and submit to the Congress and  
4 the Secretary of the Interior a comprehensive annual financial report in  
5 conformance with the standards of the National Council on Governmental  
6 Accounting within one hundred and twenty days after the close of the fiscal  
7 year. The comprehensive annual financial report shall include statistical data  
8 as set forth in the standards of the National Council on Governmental  
9 Accounting relating to the physical, economic, social and political  
10 characteristics of the government, and any other information required by  
11 Congress. The Governor shall transmit the comprehensive annual financial  
12 report to the Inspector General of the Department of the Interior who shall  
13 audit it and report his findings to Congress. The Governor shall also make  
14 such other reports at such other times as may be required by the Congress or  
15 under applicable Federal law. He shall also submit to the Congress, the  
16 Secretary of the Interior, and the cognizant Federal auditors a written  
17 statement of actions taken or contemplated on Federal audit  
18 recommendations within sixty days after the issuance date of the audit  
19 report. He shall have the power to issue executive orders and regulations not  
20 in conflict with any applicable law. He may recommend bills to the  
21 Legislature and give expression to his views on any matter before that body.

22 There is hereby established the office of Lieutenant Governor of Guam.  
23 The Lieutenant Governor shall have such executive powers and perform such  
24 duties as may be assigned to him by the Governor or prescribed by this  
25 chapter or under the laws of Guam.

26 There is hereby established the office of the Attorney General to be  
27 administered by the Attorney General of Guam who shall be elected in

1 accordance with the amendments provided in Section 1422. The Attorney  
 2 General shall be the chief legal officer of the government of Guam, shall be  
 3 vested with common law powers and such additional powers and duties as  
 4 may be prescribed under the laws of Guam, not inconsistent with this chapter.  
 5 The Attorney General shall prosecute all criminal violations of Guam law,  
 6 provide legal advice to the government, and represent the government in all  
 7 civil cases in which the government of Guam may be interested. The Attorney  
 8 General may not, while in office, engage in the private practice of law or  
 9 actively engage in partisan politics or, within one year of ceasing to hold  
 10 office, run for other elective office. The salary of the Attorney General shall  
 11 be established by law.

12 §1422a. Initiative, Referendum and Removal. (a) The people of Guam  
 13 shall have the right of initiative and referendum, to be exercised under  
 14 conditions and procedures specified in the laws of Guam.

15 (b) Any Governor, Lieutenant Governor, Attorney General or member  
 16 of the Legislature of Guam may be removed from office by a referendum  
 17 election in which at least two-thirds of the number of persons voting for such  
 18 official in the last preceding general election at which such official was  
 19 elected vote in favor of a recall and in which those so voting constitute a  
 20 majority of all those participating in the referendum election. The  
 21 referendum election shall be initiated by the Legislature of Guam following  
 22 (a) a two thirds vote of the members of the Legislature in favor of a  
 23 referendum, or (b) a petition for such a referendum to the Legislature by  
 24 registered voters equal in number to at least 50 per centum of the whole  
 25 number of votes cast at the last general election at which such official was  
 26 elected preceding the filing of the petition.

1       §1422b. Vacancy in Office of Governor or Lieutenant Governor;  
2       Temporary Disability, or Temporary Absence of Governor. (a) Temporary  
3       disability or temporary absence of Governor. In case of the temporary  
4       disability or temporary absence of the Governor, the Lieutenant Governor  
5       shall have the powers of the Governor.

6       (b) Permanent vacancy in office of Governor. In case of a permanent  
7       vacancy in the office of Governor, arising by reason of a death, resignation,  
8       removal by recall, or permanent disability of a Governor-elect, or for any  
9       other reason, the Lieutenant Governor, or Lieutenant Governor-elect shall  
10      become the Governor, to hold office for the unexpired term and until he or his  
11      successor shall have been duly elected and qualified at the next regular  
12      election for Governor.

13      (c) Temporary disability or temporary absence of Lieutenant Governor.  
14      In case of the temporary disability or temporary absence of the Lieutenant  
15      Governor, or during any period when the Lieutenant Governor is acting as  
16      Governor, the Speaker of the Guam Legislature shall act as Lieutenant  
17      Governor.

18      (d) Permanent vacancy in office of Lieutenant Governor. In case of a  
19      permanent vacancy in the office of Lieutenant Governor, arising by reason of  
20      the death, resignation, or permanent disability of the Lieutenant Governor,  
21      or because the Lieutenant Governor or Lieutenant Governor elect has  
22      succeeded to the office of Governor the Governor shall appoint a new  
23      Lieutenant Governor, with the advice and consent of the legislature, to hold  
24      office for the unexpired term and until he or his successor shall have been duly  
25      elected and qualified at the next regular election for Lieutenant Governor.

26      (e) Temporary disability or temporary absence of both Governor and  
27      Lieutenant Governor. In case of the temporary disability or temporary

1 absence of both the Governor and Lieutenant Governor, the powers of the  
 2 Governor shall be exercised, as Acting Governor, by such person as the laws  
 3 of Guam may prescribe. In case of a permanent vacancy in the offices of both  
 4 the Governor and Lieutenant Governor, the office of Governor shall be filled  
 5 for the unexpired term in the manner prescribed by the laws of Guam.

6 (f) Additional compensation. No additional compensation shall be paid  
 7 to any person acting as Governor or Lieutenant Governor who does not also  
 8 assume the office of Governor or Lieutenant Governor under the provisions  
 9 of this chapter.

10 (g) Vacancy in the office of Attorney General. In case of the temporary  
 11 disability or temporary absence or permanent absence of the Attorney  
 12 General which occurs beyond two (2) years from the incumbent's assumption  
 13 of office, the Legislature may determine the manner in which such vacancy is  
 14 filled. In case of a permanent vacancy occurring within two (2) years from the  
 15 incumbent's assumption of office, the Governor of Guam shall call a special  
 16 election to fill the remainder of the term of office of the Attorney General.

17 §1422c. Executive agencies and instrumentalities. (a) Appointment of  
 18 heads; merit system. The Governor shall, except as otherwise provided in  
 19 this chapter or the laws of Guam, appoint, by and with the advice and  
 20 consent of the Legislature, all heads of executive agencies and  
 21 instrumentalities. The Legislature shall establish a merit system [and, as far  
 22 as practicable, appointments and promotions shall be made in accordance  
 23 with such merit system] governing the selection, appointment and removal of  
 24 employees within the merit system. The Legislature may also establish such  
 25 other positions in the government of Guam not within such merit system.  
 26 The Governor of Guam may by law establish a Civil Service Commission to

1 administer the merit system. Members of the Commission may be removed  
2 as provided by the laws of Guam.

3 (b) Powers and duties of officers. All officers shall have such powers  
4 and duties as may be conferred or imposed upon them by law or by executive  
5 regulation of the Governor not inconsistent with any law.

6 (c) Reorganization. The Governor shall, from time to time, examine  
7 the organization of the executive branch of the government of Guam, and  
8 shall determine and carry out such changes therein as are necessary to  
9 promote effective management and to execute faithfully the purposes of this  
10 chapter and the laws of Guam.

11 (d) Continuation in office of incumbents. All persons holding office in  
12 Guam on August 1, 1950 may, except as otherwise provided in this chapter,  
13 continue to hold their respective offices until their successors are appointed  
14 and qualified.

15 §1422d. Inspector General: Functions; Duties. (a) Functions, powers,  
16 duties transferred. The following functions, powers, and duties heretofore  
17 vested in the government comptroller for Guam are hereby transferred to the  
18 Inspector General, Department of Interior, for the purpose of establishing an  
19 organization which will maintain a satisfactory level of independent audit  
20 oversight of the government of Guam:

21 (1) The authority to audit all accounts pertaining to the revenue  
22 and receipts of the government of Guam, and of funds derived from  
23 bona issues, and the authority to audit, in accordance with law and  
24 administrative regulations, all expenditures of funds and property  
25 pertaining to the government of Guam including those pertaining to  
26 trust funds held by the government of Guam.

(2) The authority to report to the Secretary of the Interior and the Governor of Guam all failures to collect amounts due the governor, and expenditures of funds or uses of property which are irregular or not pursuant to law.

Section 2. Section 1421g(c) of 48 United States Code is amended to read:

"§1421g(c) [Office of the Public Prosecutor;] Office of Public Auditor. The government of Guam may by law establish an [Office of Public Prosecutor and] Office of Public Auditor. The [Public Prosecutor and] Public Auditor may be removed as provided by the laws of Guam. "; and be it further

RESOLVED, that the Speaker certify to and the Legislative Secretary attest the adoption hereof and that copies be thereafter transmitted to the Honorable Congressman Robert Underwood, Member of Congress; to Congressman Newt Gingrich, Speaker, United States House of Representative; to Senator Trent Lott, Assistant Majority Leader, United States Senate; to Senator Frank Murkowski, Chairperson, Senate Energy and Natural Resources Committee; to Congressman Don Young, Chairman, House Committee on Resources; to Congressman Elton Gallegly, Chairman, House Subcommittee on Native American and Insular Affairs; and to the Governor of Guam.

DULY AND REGULARLY ADOPTED ON THE 8TH DAY OF JUNE, 1996.

  
 \_\_\_\_\_  
 DON PARKINSON  
 Speaker

  
 \_\_\_\_\_  
 JUDITH WON PAT-BORJA  
 Senator and Legislative Secretary

Office of



## Senator Vicente C. Pangellinan

### Twenty-Third Guam Legislature

Chairman, Committee on Youth, Labor & Parks and Recreation  
 130 Aspinall Avenue • Suite 101 • Agaña Guam • 96910 Phone (671) 472-3552-4 Fax (671) 472-3556

The People

TESTIMONY ON  
 RESOLUTION 433 OF THE GUAM LEGISLATURE  
 BEFORE THE SUBCOMMITTEE ON  
 NATIVE AMERICAN AND INSULAR AFFAIRS OF  
 THE COMMITTEE ON RESOURCES,  
 U.S. HOUSE OF REPRESENTATIVES  
 JULY 24, 1996

Honorable Chairperson and members of the Subcommittee on Native American and Insular Affairs, as a member of the 23rd Guam Legislature, I would like to send a warm Håfa Adai and a Dangkolo na Si Yu'os Ma'åse' for this opportunity to present testimony on Resolution 433 of the Guam Legislature and my proposed Bill 571 which would provide for an elected Attorney General position on Guam.

The political development of the unincorporated territory of Guam, in its present journey toward self-determination, has undergone a series of laborious processes to come to where we stand today, to demonstrate our current level of political maturity. As a precarious creature of the Congress, however, our island and our people have not enjoyed the full benefits normally and rightfully entitled to every American citizen. As a secondary entity, we have been and still are often forgotten during the decision-making process and in its resultant policies. Our achievements, which include an elected Legislature in the early 50's, elected Governor and Delegate to the Congress in the 70's, and most recently, the appointment of our own Supreme Court Justices, have been results of a tedious process of persistent urging and lobbying by our dedicated leaders over a prolonged period of time.

The compilation of these incremental successes, however slight they may seem to our fellow Americans in the continent, is nevertheless a giant step for the people of Guam. It signifies that the Congress, as a body, has recognized the tenet which proclaims the inalienable democratic right of a people to govern themselves on the matters that affect them directly. No longer must nor should Guam be subject to paternalistic governance by the Organic Act.



I appear before you today to convey the unequivocal desire of the people of Guam to elect their Attorney General. This expression of their desire is embodied in Guam Legislature Resolution 433 and a measure I introduced and now ready for floor action, Bill 571. The direct selection by the will of the people of Guam of the Attorney General is right, just, and prudent for the people of Guam to have an independent Attorney General, unfettered by incessant political intervention from a single individual.

The need and the will of the people of Guam for an Attorney General accountable solely to the public is overwhelmingly evident. Recent events have shocked the Guam populace as a result of the Guam Legislative Judiciary Committee's oversight hearings on the Attorney General's office of Guam. During the hearings emerged extremely grave concerns of whether the handpicked Attorney General of Guam is sufficiently independent from political interference by the Governor. Under subpoena, as most employees and members of the public alike were hesitant to testify in the fear of reprisal, many, including current and former prosecutors and prominent private attorneys, informed the members of the Legislature that there exist extensive political interference, selective prosecution, poor management and sloppy performance at the Office.

Since the Governor does currently appoint the Attorney General, the office of the Attorney General may be subject to the unwanted, unfair, and vindictive influence of the Governor's office. Although the Attorney General may argue otherwise, and does so indeed, the preponderance of the evidence and testimony to the contrary is staggering. At the Judiciary hearing, under sworn testimony, witnesses attested that without justifiable evidence, cases are often thrown out, or sometimes invidiously created. The Governor has cast a dark specter on the horizons of the light and openness and the fair play and integrity of our democratic system. To say the least, I and the people of Guam are utterly astonished, dismayed and concerned about the ability of the Attorney General to disassociate himself from political intervention at its highest level. We must not permit the power of the law as exercised by an appointed Attorney General to chill the basic tenets of democracy that allow the leaders and citizens of our community to debate and discuss issues that affect our lives without the fear of retribution and revenge.

The Governor should not and must not violate the independence of the Attorney General's office. It is fundamental to the underpinning of our democratic process of openness and fair play that the Attorney General not be used as an apparatus of the head of the executive branch, for the

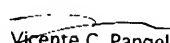
power of the law is too great and pervasive to be used as a political tool of a single person. We have seen what happens when a single person controls the law instead of serving the people. History is replete with individuals who have fulfilled their temptations although unwise and hurtful, simply because they have the power to do so. We have seen it with Napoleon, Hitler, Stalin and Marcos.

The sunlit reasoning of democratic principles that espouses accountability of the Attorney General to the general populace instead of to a single appointing authority is exigently appropriate now. The Attorney General should not be a *bête noire*- he or she must represent the common good and the consensual public interest.

Political maturity can be best described as the empowerment of the electorate to hold its directly accountable to the people. An elected Attorney General does not mean the absence of politics from the selection process, but rather that the politics and the selection process are invariably controlled by the people, via the ballot box. These are not new paths that we are forging, but rather trails that have been blazed by other jurisdictions as they traveled the road to political maturation. If we must endure a tempest along the pilgrimage, let it be so. However, I can feel the calm wind approaching us, signaling us of the tranquillity that lies ahead at the end of our journey.

Dangkolo na Si Yu'os Ma'ase'. Once again, I thank you for the opportunity to present this testimony.

Respectfully submitted,

  
Vicente C. Pangelinan  
Member, 23rd Guam Legislature



## General Assembly

Distr.  
LIMITEDA/AC.109/L.1843  
10 July 1996

ORIGINAL: ENGLISH

SPECIAL COMMITTEE ON THE SITUATION  
WITH REGARD TO THE IMPLEMENTATION  
OF THE DECLARATION ON THE GRANTING  
OF INDEPENDENCE TO COLONIAL  
COUNTRIES AND PEOPLES

REPORT OF THE SUBCOMMITTEE ON SMALL TERRITORIES,  
PETITIONS, INFORMATION AND ASSISTANCE

Rapporteur: Ms. Roslyn Lauren KHAN-CUMMINGS (Trinidad and Tobago)

## CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. QUESTION OF THE NON-SELF-GOVERNING TERRITORIES OF AMERICAN SAMOA, ANGUILLA, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, GUAM, MONTSERRAT, PITCAIRN, ST. HELENA, TOKELAU, TURKS AND CAICOS ISLANDS AND UNITED STATES VIRGIN ISLANDS .....	1 - 9	3
A. Consideration by the Subcommittee .....	1 - 8	3
B. Draft general resolution .....	9	4
C. Draft resolutions on specific conditions prevailing in American Samoa, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands and United States Virgin Islands .....		8
1. American Samoa .....		8
2. Anguilla .....		9
3. Bermuda .....		9



## CONTENTS (continued)

	<u>Paragraphs</u>	<u>Page</u>
4. British Virgin Islands .....		10
5. Cayman Islands .....		11
6. Guam .....		12
7. Montserrat .....		13
8. Pitcairn .....		14
9. St. Helena .....		15
10. Turks and Caicos Islands .....		15
11. United States Virgin Islands .....		16
II. QUESTION OF DISSEMINATION OF INFORMATION ON DECOLONIZATION .....	10 - 23	17
A. Consideration by the Subcommittee .....	10 - 11	17
B. Statement by the representative of the Department of Public Information .....	12 - 15	18
C. Statement by the representative of the Department of Political Affairs .....	16 - 21	19
D. Week of Solidarity with the Peoples of All Colonial Territories, Fighting for Freedom, Independence and Human Rights (27-31 May 1996) ...	22	20
E. Draft resolution on dissemination of information on decolonization .....	23	22
III. ADOPTION OF THE REPORT .....	24 - 25	23

/...

I. QUESTION OF THE NON-SELF-GOVERNING TERRITORIES OF AMERICAN SAMOA, ANGUILLA, BERMUDA, BRITISH VIRGIN ISLANDS, CAYMAN ISLANDS, GUAM, MONTSERRAT, PITCAIRN, ST. HELENA, TOKELAU, TURKS AND CAICOS ISLANDS AND UNITED STATES VIRGIN ISLANDS

A. Consideration by the Subcommittee

1. The Subcommittee on Small Territories, Petitions, Information and Assistance considered the Territories of American Samoa, Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, Tokelau, Turks and Caicos Islands and United States Virgin Islands en bloc at its 696th to 702nd meetings, from 26 June to 8 July 1996.
2. During its consideration of these items, the Subcommittee had before it working papers prepared by the Secretariat on those Territories (A/AC.109/2041 and Corr.1, 2043, 2044 and Add.1, 2045, 2047 and Add.1, 2050-2053, 2054 and Add.1, 2055 and 2056).
3. The Subcommittee conducted a review of the political, economic and social conditions in each of the Territories in the light of the information contained in the working papers prepared by the Secretariat. The Subcommittee noted that the information contained in the working papers was not always up to date and that the Secretariat relied in some instances on published sources. The Subcommittee requested the administering Powers to cooperate with the Secretariat in furnishing information on the Territories.
4. In the course of its review, the Subcommittee considered all aspects of the issues relating to the Non-Self-Governing Territories and focused attention on the following:
  - (a) Progress or lack of progress in ascertaining the wishes of the population of the Territories regarding their future status;
  - (b) The position of the territorial Governments and political parties and constitutional developments on the question of the future status of the Territories;
  - (c) The general socio-economic developments and specific problems faced by some Territories in respect of environment, drug-trafficking, etc.;
  - (d) The dispatch of visiting missions and participation of representatives of Non-Self-Governing Territories in the work of the Committee so that the Committee can obtain first-hand information on the wishes of the population.
5. The Subcommittee noted that in some cases there was no up-to-date information to ascertain the wishes of the population regarding their future status. It remains convinced that the wishes and aspirations of the people of the Territories should continue to guide the development of their future political status and that referendums, free and fair elections, and other forms of popular consultation play an important role in ascertaining the wishes and aspirations of the people. The outcome of such exercises would help the

/...

A/AC.109/L.1843

English

Page 4

Subcommittee in reviewing the list of the Non-Self-Governing Territories with which the Special Committee is concerned. The Subcommittee was aware that some of the Territories were not seeking independence but sought other options of self-determination. The Subcommittee also noted that some Territories attached priority to socio-economic development before making a choice as to their future status.

6. The Subcommittee attached importance to a review of the list of the Non-Self-Governing Territories in the light of the fact that the International Decade for the Eradication of Colonialism by the year 2000 is well past its mid-point.

7. In view of Tokelau's own decision-making agenda and related changes to the legislative framework for Tokelau, the Chairman of the Special Committee was requested by the Permanent Representative of New Zealand to the United Nations to allow the Administrator of Tokelau and the Faipule of Tokelau to appear before the Special Committee to allow it to hear, at first hand, how decisions on Tokelau's future status are being made. Accordingly, the Subcommittee recommended that this year the draft resolution on specific conditions prevailing in Tokelau be considered and adopted by the Special Committee.

8. The Subcommittee reiterated its view that the cooperation of all administering Powers was essential for the discharge of its mandate and resolved that it should seek the cooperation of all administering Powers through demonstration of a practical, flexible and innovative approach. The Subcommittee was conscious of the changes in the international situation and the consequent need to adapt its approach in tune with the changed circumstances. The Subcommittee expressed its readiness to work with the administering Powers in a spirit of constructive cooperation to achieve the goals of the United Nations in respect of the Non-Self-Governing Territories. The Subcommittee hoped that the administering Powers would take note of this new approach and come forward with cooperation.

#### B. Draft general resolution

9. Having considered the question of the Non-Self-Governing Territories of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, Tokelau, the Turks and Caicos Islands and the United States Virgin Islands, the Subcommittee has decided to recommend the following draft resolution for action by the Special Committee:

##### The Special Committee,

Having considered the questions of the Non-Self-Governing Territories of American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, Tokelau, the Turks and Caicos Islands and the United States Virgin Islands, hereinafter "the Territories",

Having examined the report of the Subcommittee on Small Territories, Petitions, Information and Assistance,

/...

Recalling General Assembly resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and all resolutions and decisions of the United Nations relating to those Territories, including, in particular, the resolutions adopted by the General Assembly at its fiftieth session on the individual Territories covered by the present resolution,

Recognizing that the specific characteristics and the sentiments of the peoples of the Territories require flexible, practical and innovative approaches to the options of self-determination, without any prejudice to territorial size, geographical location, size of population or natural resources,

Recalling General Assembly resolution 1541 (XV) of 15 December 1960, containing the principles that should guide Member States in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter of the United Nations,

Expressing its concern that even three and a half decades after the adoption of the Declaration there still remains a number of Non-Self-Governing Territories,

Conscious of the need to ensure the full and speedy implementation of the Declaration in respect of the Territories, in view of the target set by the United Nations to eradicate colonialism by the year 2000,

Recognizing that in the decolonization process there is no alternative to the principle of self-determination as enunciated by the General Assembly in its resolutions 1514 (XV), 1541 (XV) and other resolutions,

Noting with appreciation the continuing exemplary cooperation of New Zealand, as an administering Power, in the work of the Special Committee, and welcoming the recent constitutional developments in Tokelau,

Welcoming the stated position of the Government of the United Kingdom of Great Britain and Northern Ireland that it continues to take seriously its obligations under the Charter of the United Nations to develop self-government in the dependent Territories and, in cooperation with the locally elected Governments, to ensure that their constitutional frameworks continue to meet the wishes of the people, and the emphasis that it is ultimately for the peoples of the Territories to decide their future status,

Noting the stated position of the Government of the United States of America that it supports fully the principles of decolonization and takes seriously its obligations under the Charter of the United Nations to promote to the utmost the well-being of the inhabitants of the Territories under United States administration,

Aware of the special circumstances of the geographical location and economic conditions of each Territory, and bearing in mind the necessity of promoting economic stability and diversifying and strengthening further the economies of the respective Territories as a matter of priority,

/...

A/AC.109/L.1843  
English  
Page 6

Conscious of the particular vulnerability of the small Territories to natural disasters and environmental degradation,

Aware of the usefulness both to the Territories and to the Special Committee of the participation of appointed and elected representatives of the Territories in the work of the Special Committee,

Convinced that the wishes and aspirations of the peoples of the Territories should continue to guide the development of their future political status and that referendums, free and fair elections, and other forms of popular consultation play an important role in ascertaining the wishes and aspirations of the people,

Convinced that any negotiations to determine the status of a Territory must not take place without an active involvement and participation of the people of that Territory,

Recognizing that all available options for self-determination are valid as long as they are in accordance with the freely expressed wishes of the peoples concerned and in conformity with the clearly defined principles contained in General Assembly resolutions 1514 (XV), 1541 (XV) and other Assembly resolutions,

Mindful that United Nations visiting missions provide an effective means of ascertaining the situation in the Territories, and considering that the possibility of sending further visiting missions to the Territories at an appropriate time and in consultation with the administering Powers should be kept under review,

Mindful also that the holding of the seminars in the Caribbean and Pacific regions alternately and at United Nations Headquarters or any other venue, as appropriate, provides an effective means for the Special Committee to discharge its mandate and promote the goals of the International Decade for the Eradication of Colonialism by the year 2000,

Mindful further that some Territories have not had any United Nations visiting mission for a long period of time,

Noting with appreciation the contribution to the development of some Territories by specialized agencies and other organizations of the United Nations system, in particular the United Nations Development Programme, and regional institutions such as the Caribbean Development Bank,

1. Approves the report of the Subcommittee on Small Territories, Petitions, Information and Assistance relating to American Samoa, Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, Tokelau, the Turks and Caicos Islands and the United States Virgin Islands;

2. Reaffirms the inalienable right of the peoples of the Territories to self-determination, including, if they so wish, independence, in conformity with the Charter of the United Nations and General Assembly resolution 1514 (XV),

/..



containing the Declaration on the Granting of Independence to Colonial Countries and Peoples;

3. Reaffirms also that it is ultimately for the peoples of the Territories themselves to determine freely their future political status in accordance with the relevant provisions of the Charter, the Declaration and the relevant resolutions of the General Assembly, and in that connection calls upon the administering Powers, in cooperation with the territorial Governments, to facilitate programmes of political education in the Territories in order to foster an awareness among the people of the legitimate political status options open to them in the exercise of their right to self-determination;

4. Requests the administering Powers, having ascertained the views of the peoples of the Territories, regularly to report to the Secretary-General on the wishes and aspirations of the people regarding their future political status;

5. Stresses the need to seek further ways and means to enhance the Special Committee's understanding of the conditions and wishes of the peoples of the Territories;

6. Requests the administering Powers and the representatives of the peoples of the Territories to assist the Special Committee by inviting the United Nations visiting missions at appropriate times to monitor the status of the Territories;

7. Reaffirms the responsibility of the administering Powers under the Charter to promote the economic and social development and to preserve the cultural identity of the Territories, and recommends that priority continue to be given, in consultation with the territorial Governments concerned, to the strengthening and diversification of their respective economies;

8. Requests the administering Powers in consultation with the peoples of the Territories to take all necessary measures to protect and conserve the environment of the Territories under their administration against any environmental degradation, and requests the specialized agencies concerned to continue to monitor environmental conditions in those Territories;

9. Calls upon the administering Powers, in cooperation with the respective territorial Governments, to continue to take all necessary measures to counter problems related to drug trafficking, money laundering and other offences;

10. Stresses that the achievement of the declared goal of eradication of colonialism by the year 2000 requires the full and constructive cooperation of all parties concerned, in particular the administering Powers;

11. Urges Member States to contribute to the efforts of the United Nations to usher in the twenty-first century in a world free of colonialism, and calls upon them to continue to give their full support to the Special Committee in its endeavours towards that noble goal;

/...

A/AC.109/L.1843  
English  
Page 8

12. Invites the specialized agencies and other organizations of the United Nations system to initiate or to continue to take all necessary measures to accelerate progress in the social and economic life of the Territories;

13. Decides to continue the examination of the question of the small Territories in order to assist the peoples of the Territories to exercise their right to self-determination, and to report thereon to the General Assembly at its fifty-first session.

C. Draft resolutions on specific conditions prevailing in American Samoa, Anquilla, Bermuda, British Virgin Islands, Cayman Islands, Guam, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands and United States Virgin Islands

1. American Samoa

The Special Committee,

Referring to the general resolution above,

Noting the report by the administering Power that most American Samoan leaders express satisfaction with the island's present relationship with the United States of America,

Noting the non-participation of the representatives of the people of American Samoa in the last two regional seminars,

Noting also that the Government of the Territory continues to have significant financial, budgetary and internal control problems and that the Territory's deficit and financial condition are compounded by the high demand for government services from the rapidly growing population, a limited economic and tax base, and recent natural disasters,

Noting further that the Territory, similar to isolated communities with limited funds, continues to experience lack of adequate medical facilities and other infrastructural requirements, especially the provision of safe drinking water to all villages in American Samoa,

Aware of the efforts of the Government of the Territory to control and reduce expenditures, while continuing its programme of expanding and diversifying the local economy,

1. Requests the administering Power, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;

2. Calls upon the administering Power to continue to assist the territorial Government in the economic and social development of the Territory,

/...

including measures to rebuild financial management capabilities and strengthening other governmental functions of the Government of the Territory.

## 2. Anguilla

The Special Committee,

Referring to the general resolution above,

Noting the non-receipt of up-to-date information on the Territory from the administering Power and that a last visiting mission took place in 1984,

Noting also that information considered by the Subcommittee was made available from published sources,

Conscious of the commitment of both the Government of Anguilla and the administering Power to a new and closer policy of dialogue and partnership through the Country Policy Plan for 1993-1997,

Aware of the efforts of the Government of Anguilla to continue to develop the Territory as a viable offshore centre and well-regulated financial centre for investors, by enacting modern company and trust laws, as well as partnership and insurance legislation, and computerizing the company registry system,

Noting the need for continued cooperation between the administering Power and the territorial Government in tackling the problems of drug trafficking and money laundering,

1. Requests the administering Power, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;

2. Calls upon the administering Power and all countries, organizations and United Nations agencies to continue to assist the Territory in social and economic development.

## 3. Bermuda

The Special Committee,

Referring to the general resolution above,

Noting the results of the independence referendum held on 16 August 1995,

Conscious of the different viewpoints of the political parties of the Territory on the future status of the Territory,

Noting the measures taken by the Government to combat racism and the plan to set up a Commission for Unity and Racial Equality,

/...

A/AC.109/L.1843  
English  
Page 10

Noting with concern the report in the Royal Gazette of 23 November 1995 that approximately 19 per cent of Bermuda's households live in a state of poverty and continue to receive some form of assistance from the Government,

Noting also the report of the intended closure of the foreign military bases and installations in the Territory,

Taking into consideration the statement made in October 1995 by the Finance Minister for the transfer of those lands for development projects,

1. Requests the administering Power, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;

2. Calls upon the administering Power to continue its programmes of socio-economic development of the Territory;

3. Also requests the administering Power to elaborate, in consultation with the territorial Government, programmes of development specifically intended to alleviate the economic, social and environmental consequences of the closure of certain military bases and installations in the Territory.

#### 4. British Virgin Islands

The Special Committee,

Referring to the general resolution above,

Noting the completion of the constitutional review in the Territory and the coming into force of the amended Constitution, and noting also the results of the general elections held on 20 February 1995,

Noting further the results of the constitutional review of 1993-1994, which made it clear that a prerequisite to independence must be a constitutionally expressed wish by the people as a result of a referendum,

Taking note of the statement made in 1995 by the Chief Minister of the British Virgin Islands that the Territory was ready for constitutional and political advancement towards full internal self-government and that the administering Power should assist through gradual transfer of power to elected territorial representatives,

Noting that the Territory is emerging as one of the world's leading offshore financial centres,

Noting also the need for continued cooperation between the administering Power and the territorial Government in countering drug trafficking and money laundering,

/...

1. Requests the administering Power, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;

2. Also requests the administering Power, specialized agencies and other organizations of the United Nations system and all financial institutions to continue to provide assistance to the Territory for socio-economic development and development of human resources, bearing in mind the vulnerability of the Territory to external factors.

#### 5. Cayman Islands

The Special Committee,

Referring to the general resolution above,

Noting the non-receipt of up-to-date information on the Territory from the administering Power and that a last visiting mission took place in 1977,

Noting also that information considered by the Subcommittee was made available from published sources,

Noting the constitutional review of 1992-1993, according to which the population expressed the sentiment that the existing relations with the United Kingdom of Great Britain and Northern Ireland should be maintained and that the current status of the Territory should not be altered,

Aware that the Territory has one of the highest per capita incomes in the region, a stable political climate, and virtually no unemployment,

Noting also the actions taken by the territorial Government to implement its localization programme to promote increased participation of the local population in the decision-making process in the Cayman Islands,

Noting with concern the vulnerability of the Territory to drug trafficking and related activities,

Noting further the measures taken by the authorities to deal with those problems,

Noting that the Territory has emerged as one of the world's leading offshore financial centres,

1. Requests the administering Power, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;

2. Also requests the administering Power, the specialized agencies and other organizations of the United Nations system to continue to provide the

/...

A/AC.109/L.1843  
English  
Page 12

territorial Government with all required expertise to enable it to achieve its socio-economic aims;

3. Calls upon the administering Power and the territorial Government to continue to cooperate to counter problems related to money laundering, smuggling of funds and other related crimes, as well as drug trafficking;

4. Requests the administering Power, in consultation with the territorial Government, to continue to facilitate the expansion of the current programme of securing employment for the local population, in particular at the decision-making level.

#### 6. Guam

The Special Committee.

Referring to the general resolution above,

Recalling that, in a referendum held in 1987, the people of Guam endorsed a draft Guam Commonwealth Act that would establish a new framework for relations between the Territory and the administering Power, providing for an increased measure of internal self-government for Guam and recognition of the right of the people of Guam to self-determination for the Territory,

Recalling also the requests by elected representatives and non-governmental organizations of the Territory that Guam not be removed from the list of the Non-Self-Governing Territories with which the Special Committee is concerned pending the exercise of self-determination by the Chamorro people,

Aware of the continued negotiations between the administering Power and the territorial Government on the draft Guam Commonwealth Act and on the future status of the Territory, with particular emphasis on the question of the evolution of the relationship between the United States of America and Guam,

Cognizant that the administering Power continues to implement its programme of transferring surplus federal land to the Government of Guam,

\* Noting that the people of the Territory have called for reform in the programme of the administering Power with respect to the thorough, unconditional and expeditious transfer of land property to the people of Guam,

Conscious that immigration into Guam has resulted in the indigenous Chamorros becoming a minority in their homeland,

Aware of the potential for diversifying and developing the economy of Guam through commercial fishing and agriculture and other viable activities,

Taking note of the proposed closing and realigning of four United States Navy installations on Guam and the request for the establishment of a transition period to develop some of the closed facilities as commercial enterprises,

/...

Recalling the dispatch in 1979 of a United Nations visiting mission to the Territory and noting the recommendation of the 1996 Pacific Regional Seminar for sending a visiting mission to Guam,

1. Calls upon the administering Power to facilitate the exercise of self-determination by the Chamorro people of Guam for the Territory, as endorsed by the people of Guam in the draft Guam Commonwealth Act, and to keep the Secretary-General informed of the progress to that end;

2. Requests the administering Power to continue to assist the elected territorial Government in achieving its political, economic and social goals;

\* 3. Also requests the administering Power, in cooperation with the territorial Government, to continue the transfer of land to the people of the Territory and to take the necessary steps to safeguard their property rights;

4. Further requests the administering Power to continue to recognize and respect the political rights and the cultural and ethnic identity of the Chamorro people and to take all necessary measures to respond to the concerns of the territorial Government with regard to the immigration issue;

5. Requests the administering Power to implement programmes specifically intended to promote the sustainable development of economic activities and enterprises by the Chamorro people;

6. Also requests the administering Power to continue to support appropriate measures by the territorial Government aimed at promoting growth in commercial fishing and agriculture and other viable activities.

#### 7. Montserrat

The Special Committee,

Referring to the general resolution above,

Noting the non-receipt of up-to-date information on the Territory from the administering Power and that a last visiting mission took place in 1982,

Noting also that information considered by the Subcommittee was made available from published sources,

Noting the functioning of a democratic process in Montserrat,

Taking note of the reported statement of the Chief Minister that his preference was for independence within a political union with the Organization of Eastern Caribbean States and that self-reliance was more of a priority than independence,

Noting with concern the dire consequences of a volcanic eruption, which led to the evacuation of a third of the Territory's population to safe areas of the island,

/...

A/AC.109/L.1843  
English  
Page 14

Noting also the efforts of the administering Power and the Government of the Territory to meet the emergency situation caused by the volcanic eruption, including the implementation of a wide range of contingency measures for both private and public sectors in Montserrat,

Noting further the coordinated response measures taken by the United Nations Development Programme and the assistance of the United Nations disaster management team,

Noting with deep concern that a substantial number of the inhabitants of the Territory continue to live in shelters because of volcanic activity,

1. Requests the administering Power, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;

2. Calls upon the administering Power, the specialized agencies and other organizations of the United Nations system, as well as regional and other organizations to provide urgent emergency assistance to the Territory in alleviating the consequences of the volcanic eruption.

#### 8. Pitcairn

The Special Committee.

Referring to the general resolution above,

Taking into account the unique nature of Pitcairn in terms of population and area,

Expressing its satisfaction with the continued economic and social advancement of the Territory, as well as with the improvement of its communications with the outside world and its management plan to address conservation issues,

1. Requests the administering Power, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;

2. Also requests the administering Power to continue its assistance for the improvement of the economic, social, educational and other conditions of the population of the Territory.

/...



9. St. Helena

The Special Committee,

Referring to the general resolution above,

Taking into account the unique character of the Territory, its population and its natural resources,

Aware of the request by the Legislative Council of St. Helena that the administering Power conduct a constitutional review in the Territory,

Noting the statement of 1995 by the administering Power that the Governor of the island would be ready to enter into debate on a constitutional review of St. Helena,

Aware of the establishment by the Government of the Territory of the Development Agency in 1995 to encourage private sector commercial development on the island,

Aware of the efforts of the administering Power and the territorial authorities to improve the socio-economic conditions of the population of St. Helena, in particular in the sphere of food production,

1. Requests the administering Power to conduct the constitutional review in the Territory, taking into account the wishes of its population;

2. Also requests the administering Power, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;

3. Further requests the administering Power and relevant regional and international organizations to continue to support the efforts of the territorial Government to address the socio-economic development of the Territory.

10. Turks and Caicos Islands

The Special Committee,

Referring to the general resolution above,

Noting the recent petition by the political leaders of the Territory addressed to the administering Power to recall the Governor and the decision by the administering Power to reject that petition,

Noting with interest the statement made and the information on the political and economic situation in the Turks and Caicos Islands provided by the Deputy Chief Minister of the Territory to the Pacific Regional Seminar held at Port Moresby in June 1996,

/...

A/AC.109/L.1843  
English  
Page 16

Taking note of the request by the Deputy Chief Minister of the Territory addressed to the Special Committee to visit the Territory and ascertain the wishes of the people of the Turks and Caicos Islands with regard to preparing themselves for self-government,

Noting also the establishment in November 1995 of the Action Committee for Political Independence, formed by prominent political figures from different parties, and its stated goal of educating the population to the disadvantages of the present colonial status and the benefits of independence,

Noting further the efforts by the Government of the Territory to strengthen financial management in the public sector, including efforts to increase revenue,

Noting with concern the vulnerability of the Territory to drug trafficking and related activities, as well as its problems caused by illegal immigration,

Noting the need for continued cooperation between the administering Power and the territorial Government in countering drug trafficking and money laundering,

1. Requests the administering Power, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;

2. Invites the administering Power to take fully into account the wishes and interests of the Government and the people of the Turks and Caicos Islands in the governance of the Territory;

3. Calls upon the administering Power and the relevant regional and international organizations to continue to provide assistance for the improvement of the economic, social, educational and other conditions of the population of the Territory;

4. Calls upon the administering Power and the territorial Government to continue to cooperate to counter problems related to money laundering, smuggling of funds and other related crimes, as well as drug trafficking.

#### 11. United States Virgin Islands

The Special Committee,

Referring to the general resolution above,

Noting that general elections were held in November 1994,

Noting also that 27.5 per cent of the electorate participated in the referendum on the political status of the Territory on 11 October 1993, and that 80.4 per cent of those who voted supported the existing territorial status

/...

arrangements with the United States of America, and that the referendum left the status issue undecided,

Noting further the continuing interest of the territorial Government in seeking associate membership in the Organization of Eastern Caribbean States and observer status in the Caribbean Community,

Noting the necessity of further diversifying the Territory's economy,

Noting also that the question of Water Island is still under discussion between the Government of the Territory and the administering Power,

Noting further the efforts of the Government of the Territory to promote the Territory as an offshore financial services centre,

Noting with satisfaction that the Territory joined the International Drug Enforcement Conference as a full member in 1995, which would strengthen its capability to combat illegal drug trafficking,

Recalling the dispatch in 1977 of a United Nations visiting mission to the Territory,

1. Requests the administering Power, bearing in mind the views of the people of the Territory ascertained through a democratic process, to keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status;

2. Requests the administering Power to continue to assist the territorial Government in achieving its political, economic and social goals;

3. Also requests the administering Power to facilitate the participation of the Territory, as appropriate, in various organizations, in particular the Organization of Eastern Caribbean States and the Caribbean Community;

4. Welcomes the negotiations between the administering Power and the territorial Government on the question of Water Island.

## II. QUESTION OF DISSEMINATION OF INFORMATION ON DECOLONIZATION

### A. Consideration by the Subcommittee

10. In accordance with its programme of work for 1996, adopted at its 696th meeting, on 24 June 1996, the Subcommittee on Small Territories, Petitions, Information and Assistance considered the question of dissemination of information on decolonization at its 700th to 702nd meetings, on 3 and 8 July 1996.

11. During its consideration of the question of dissemination of information on decolonization, the Subcommittee held consultations with representatives of the Department of Public Information and the Department of Political Affairs of the Secretariat.

/...

A/AC.109/L.1843  
English  
Page 18

B. Statement by the representative of the Department  
of Public Information

12. In his statement, the representative of the Department of Public Information said that the Department's report covered the activities undertaken by the Department during the period from May 1995 to April 1996. The Department's multimedia activities included a wide range of issues pertaining to decolonization. The adoption of General Assembly resolution 50/40 on dissemination of information was highlighted by the Department's news programmes for broadcasting organizations worldwide and received emphasis in its press releases in English and French.

13. As part of its regular coverage of United Nations activities, the Department issued a total of 48 press releases in English and French on issues relating to decolonization. During 1995, a wide range of information covering all aspects of decolonization was processed by the staff of the United Nations Yearbook for volume 48, covering the events of 1994, as well as for volume 43, a backlog edition covering events in 1989; those volumes were being published in 1996 and 1997, respectively. In the special fiftieth anniversary commemorative edition, published in August 1995, a major section entitled "Emerging nations" covered issues relating to the end of the International Trusteeship system, the status of the remaining Non-Self-Governing Territories, the thirtieth anniversary of the 1960 Declaration, and the dismantling of the colonial system, including case studies on Algeria, Angola, Mozambique, Namibia and Southern Rhodesia. The Department also continued to distribute the poster on decolonization, published in 1994 in English, French and Spanish, entitled "Complete Decolonization by the Year 2000 - Freedom to Choose."

14. The Department produced 48 radio programmes which covered a wide range of activities related to decolonization. Related activities within the United Nations system were also televised and disseminated through feeds and dubs made available to networks and other television stations and through packages of television news and video highlights provided to international news syndicators. The Department's Audio/Visual Library continued to make tapes and cassettes available to correspondents, delegates, United Nations radio producers and outside producers on decolonization issues.

15. The worldwide network of 68 United Nations information centres and services continued to distribute the Department's information materials relating to decolonization, through the local media, non-governmental organizations and educational institutions. The same materials also formed part of United Nations Information Centres reference library collections. Whenever appropriate, the Centres incorporated such information in their briefings on the work of the Organization as well as in their newsletters. The United Nations Information Centre at Port-of-Spain assisted the Special Committee during the Caribbean Regional Seminar on decolonization held from 3 to 5 July 1995. Audio material recorded during the Seminar, including special interviews, was sent to Headquarters for production of radio programmes for global distribution.

/...

C. Statement by the representative of the Department of Political Affairs

16. In his statement before the Subcommittee, the representative of the Department of Political Affairs reviewed the Department's activities in 1995 in the area of dissemination of information on decolonization. He drew the attention of the Subcommittee members to the provisions of the most recent General Assembly resolution on dissemination of information on decolonization (resolution 50/40) with regard to the functions of Department of Political Affairs.

17. In the light of the provisions of that resolution, the work of the Department in the dissemination of information was focused on three major areas: (a) oral dissemination of information through personal contacts of the Department's officers with leading experts on Non-Self-Governing Territories, representatives from academia and media organizations; (b) the systematic distribution of documents on decolonization issues, in close cooperation with the Department of Public Information, particularly in connection with regional seminars and events in other forums, at United Nations Headquarters and elsewhere; and (c) various contributions prepared by the Department of Political Affairs for recurrent or occasional United Nations publications. All these activities were closely coordinated with the relevant departments and services of the United Nations Secretariat, first and foremost with the Department's longstanding partner, the Department of Public Information.

18. One area in which the contribution of the Department of Political Affairs was considered important was, as in the previous years, the political advice and up-to-date information provided by the Department to the Department of Public Information in the preparation of published materials. Continuing its past practice, the Department cooperated with the Department of Public Information in the preparation of relevant chapters for the 1995 United Nations Yearbook. The questions covered in that contribution included, actions by the General Assembly and its subsidiary bodies, implementation of the resolutions on decolonization by the specialized agencies, foreign economic and other interests in the Territories, scholarship programmes and training for the inhabitants of the Non-Self-Governing Territories and other decolonization issues. In this context the representative of the Department of Political Affairs mentioned the updating of information that the Department undertook for various organizations' Yearbooks, including those distributed through electronic media. He also said that desk officers of the Department responsible for decolonization continued to provide an ongoing consultation for the United Nations tour guides on the decolonization questions for the general public visiting Headquarters.

19. The Department availed itself of the opportunity provided by the seminars organized by the Special Committee away from Headquarters to disseminate information on decolonization. The representative of the Department stated that, given the diminished human resources of the Department of Political Affairs involved in servicing decolonization bodies and providing working documents on decolonization issues to the General Assembly and its subsidiary bodies, it was becoming more and more difficult to attend to various requests from academia, the general public and individuals for specific information on decolonization. The regional seminars provided a unique opportunity to

/...

A/AC.109/L.1843  
English  
Page 20

accomplish several major tasks at one time. It helped the Department to collect up-to-date information on the political and constitutional developments in the Territories through discussions with representatives from the Non-Self-Governing Territories, as well as experts and non-governmental organizations active in the field of decolonization; the Department achieved a great deal by directly disseminating in bulk various working documents of the Special Committee and its subsidiary bodies as well as other material published by the Department of Public Information at the venue of the seminar. The recent Pacific Regional Seminar had offered an excellent opportunity for dissemination of information. The direct contact and exchange of information with the administrator of Tokelau, the Chief Minister of Gibraltar and the Deputy Chief Minister of the Turks and Caicos Islands, as well as representatives from New Caledonia, East Timor and the Falkland Islands (Malvinas) and other participants, was useful in rendering the services of the Department on the work of the Special Committee.

20. The Department of Political Affairs also attached great importance to the distribution of information on decolonization, and took particular care to reply to individual requests for information on the work of the United Nations in the field of decolonization, although those requests seemed to have diminished in recent years. The Department maintained regular and fruitful contacts with regional and intergovernmental organizations, both in the Caribbean and the Pacific regions, especially CARICOM, the Eastern Caribbean Development Bank, the Caribbean Development Bank and the South Pacific Forum. The valuable input from those organizations on the issues facing small island Non-Self-Governing Territories enabled the Department to undertake more thorough analysis of the problems faced by those Territories and to reflect them adequately in the working papers. The representative of the Department said that that source was becoming even more important in the absence of up-to-date information on the Territories from some of the administering Powers.

21. The representative of the Department assured the Subcommittee that the Department would make every effort to fulfil the mandate within the limits of its diminished resources and the financial constraints facing the Organization. He concluded by saying that the Department of Political Affairs would take into consideration the guidelines and recommendations the Subcommittee would make at the conclusion of its current session.

D. Week of Solidarity with the Peoples of All Colonial Territories, Fighting for Freedom, Independence and Human Rights (27-31 May 1996)

22. In accordance with the programme of work for 1996 adopted by the Special Committee at its 1454th meeting, on 16 February 1996, the Subcommittee on Small Territories, Petitions, Information and Assistance was to consider the question of the Week of Solidarity at its meetings in May 1996. Since the Pacific Regional Seminar was held from 12 to 14 June 1996, the meetings of the Subcommittee scheduled for May had to be moved to a later date. Since the dates for the Week of Solidarity were in close proximity to the Pacific Regional Seminar, the Chairman found it most appropriate to make the statement on the occasion of the Week of Solidarity at the Seminar on 14 June 1996. The statement was as follows:

/...

"Since 1972, in accordance with General Assembly resolution 2911 (XXVII), the Governments and peoples of the world have been observing annually a Week of Solidarity with the Peoples of All Colonial Territories. This celebration is in full accord with the purposes and tenets embodied in the Charter of the United Nations and is in conformity with the principles enshrined in the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in Assembly resolution 1514 (XV).

"Today, when our Organization takes a closer look at its achievements, its success in the field of decolonization is universally recognized. Hundreds of millions gained their freedom and independence in the surge of decolonization following the creation of the United Nations. Their membership in the United Nations as sovereign States strengthened the fundamental basis of the international community.

"We remember the history of the struggles against colonialism and pay tribute to all those who took part in them. We remain mindful of the sacrifices that made it possible for hundreds of millions of peoples to achieve self-determination and independence.

"However important the success in the field of decolonization, the task is still unfinished in that area and requires further concerted and determined action on the part of all those involved. There are still peoples who have not been able to exercise their right to self-determination. These are mostly peoples of small island Non-Self-Governing Territories located mainly in the Pacific and Caribbean regions. They are confronted, inter alia, by problems of their small size, low population, geographic remoteness, limited natural resources and vulnerability to natural disasters. Their situations require new and innovative solutions geared towards the implementation of the International Decade for the Eradication of Colonialism launched by the General Assembly in 1988.

"Convinced as we are that in the decolonization process there is no alternative to the principle of self-determination, we once again reiterate the legitimacy of all options of self-determination consistent with General Assembly resolutions 1514 (XV) and 1541 (XV) as long as it is ascertained that they are the freely expressed wishes of the peoples concerned. We should continue to exercise flexibility and realism in our endeavours to complete the process of decolonization. The wishes of the peoples of the Non-Self-Governing Territories should not be ignored when examining once again the options of self-determination available to them.

"In that connection, we further appeal for the strengthened and continued support of the administering Powers, whose cooperation with the Special Committee is essential for the progress of the Territories towards self-determination. We count on the support of the specialized agencies, which should continue to assist the Non-Self-Governing Territories in enhancing their standard of living and promoting their self-sufficiency. We count on regional and international organizations, which should explore new avenues to provide the Non-Self-Governing Territories with legal and political opportunities for participating in programmes that relate to

/...

A/AC.109/L.1843  
English  
Page 22

their environment and livelihood. We count on support for our efforts from all Member States and non-governmental organizations.

"We hope and believe that our combined, unrelenting efforts will ensure the fulfilment of the promise for freedom, lasting peace, sustained growth and sustainable development for all the peoples of our planet in accordance with the purposes and principles of the United Nations."

E. Draft resolution on dissemination of information on decolonization

23. Having concluded its examination of the item, the Subcommittee decided to recommend the following draft resolution for action by the Special Committee:

The Special Committee,

Having examined questions relating to the dissemination of information on decolonization,

Recalling General Assembly resolution 1514 (XV) of 14 December 1960, containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, and other resolutions and decisions of the United Nations concerning the dissemination of information on decolonization, in particular General Assembly resolution 50/40 of 6 December 1995,

Recognizing the need for flexible, practical and innovative approaches towards reviewing the options of self-determination for the peoples of Non-Self-Governing Territories with a view to achieving complete decolonization by the year 2000,

Reiterating the importance of dissemination of information as an instrument for furthering the aims of the Declaration, and mindful of the role of world public opinion in effectively assisting the peoples of Non-Self-Governing Territories to achieve self-determination,

Aware of the role of non-governmental organizations in the dissemination of information on decolonization,

1. Approves the activities in the field of dissemination of information on decolonization undertaken by the Department of Public Information and the Department of Political Affairs;

2. Considers it important to continue its efforts to ensure the widest possible dissemination of information on decolonization, with particular emphasis on the options of self-determination available for the peoples of Non-Self-Governing Territories;

3. Requests the Department of Political Affairs and the Department of Public Information to take into account the suggestions of the Special Committee to continue their efforts to take measures through all the media available, including publications, radio and television, as well as the Internet, to give

/...



publicity to the work of the United Nations in the field of decolonization and, inter alia:

(a) To continue to collect, prepare and disseminate, particularly to the Territories, basic material on the issues of self-determination of the peoples of Non-Self-Governing Territories;

(b) To seek the full cooperation of the administering Powers in the discharge of the tasks referred to above;

(c) To maintain a working relationship with the appropriate regional and intergovernmental organizations, particularly in the Pacific and Caribbean regions, by holding periodic consultations and exchanging information;

(d) To encourage involvement of non-governmental organizations in the dissemination of information on decolonization;

(e) To report to the Special Committee on measures taken in the implementation of the present resolution;

4. Requests all States, including the administering Powers, to continue to extend their cooperation in the dissemination of information referred to in paragraph 2 above.

### III. ADOPTION OF THE REPORT

24. Having carefully examined the situation in the Non-Self-Governing Territories and the question of dissemination of information on decolonization, the Subcommittee adopted by consensus the texts of the preceding draft resolutions, and conclusions and recommendations contained therein, at its 702nd meeting, on 8 July 1996, for action by the Special Committee.

25. At the same meeting, the Subcommittee adopted the present report.

-----

# VIRGIN ISLANDS AND NORTHERN MARIANA ISLANDS ISSUES

---

WEDNESDAY, JUNE 26, 1996

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIVE  
AMERICAN AND INSULAR AFFAIRS, COMMITTEE ON RE-  
SOURCES,

*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:10 p.m., in room 1334, Longworth House Office Building, Hon. Elton Gallegly (Chairman of the Subcommittee) presiding.

## STATEMENT OF HON. ELTON GALLEGLY, A U.S. REPRESENTATIVE FROM CALIFORNIA; AND CHAIRMAN, SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS

Mr. GALLEGLY. It is a pleasure to begin this hearing on the Virgin Islands issue with a warm welcome to the distinguished Governor of the Virgin Islands, my good friend Governor Roy Schneider. Welcome, Governor. I am fortunate to have seen firsthand the efforts of the Governor to bring about order in the aftermath of the hurricanes which blasted the Virgin Islands last year.

In addition, I am aware of a number of the measures the Governor has undertaken to improve the fiscal health of the territory and to promote economic development and self-sufficiency in the Virgin Islands. You are to be commended for these efforts, Governor, and I would hope that consideration of the legislative proposals before the Subcommittee today would further advance your initiatives.

Today, the Subcommittee will hear testimony regarding two legislative proposals introduced by the Virgin Islands' Delegate Victor Frazer: H.R. 3634, to amend provisions of the Revised Organic Act of the Virgin Islands, and H.R. 3635, to transfer management authority for the Christiansted Historic Site to the Virgin Islands. These seem to represent straightforward proposals to improve the management of the Government of the Virgin Islands.

There are two panels presenting testimony. First, the panel with Governor Schneider will be introduced by Delegate Frazer, followed by the Administration's panel of the Director of the National Park Service, Roger Kennedy, and the Director of the Office of Insular Affairs, Allen Stayman. So with that, I guess we would ask our friend, Congressman Frazer, to introduce our first panel.

[Prepared statement of Hon. Elton Gallegly follows:]

### STATEMENT OF HON. ELTON GALLEGLY

As the Virgin Islands has not yet adopted a Constitution, changes to the laws of governance may require a congressional enactment of a change in the Organic Act of the Virgin Islands. The Two provisions in H.R. 3634, the Revised Organic Act of the Virgin Islands would clarify the meaning of the temporary absence of the Governor or Lt. Governor to not include physical absence from the territory. Modern telecommunications permits these executive officials of the Virgin Islands to maintain contact and effectively make decisions long-distance.

In addition, the Virgin Islands would be authorized to issue parity bonds instead of priority bonds as now required by the Organic Act. This should result in in-

creased savings to the Virgin Islands and the issuance of parity bonds is a common practice in communities in the fifty states.

H.R. 3635, would direct the Secretary of the Interior to transfer management authority of the Christiansted Historic site upon the request of the Governor of the Virgin Islands and completion of an agreement. The Governor of the Virgin Islands has indicated the Virgin Islands could more effectively manage and operate the six-acre site in the heart of Christiansted. The Secretary is given complete discretion to determine the ability of the Virgin Islands to financially manage and operate the historic site. Also, title to the property is retained by the United States and the Secretary may terminate the agreement if the terms are not met, revoke the authority to manage the site. The bill clearly provides the Secretary with the discretion to begin and terminate the transfer of authority to manage the historic site. I would hope that this would be recognized and that there would not be an automatic rejection to a bill to permit the saving of federal funds and the devolution of management to a local government.

### **STATEMENT OF HON. VICTOR FRAZER, A DELEGATE IN CONGRESS FROM THE TERRITORY OF THE VIRGIN ISLANDS**

Mr. FRAZER. Good afternoon, Mr. Chairman and Members of the Committee. It gives me pleasure, Mr. Chairman, to introduce the Governor of the Virgin Islands, Dr. Roy L. Schneider. Governor Schneider speaks on behalf of the people of the Virgin Islands here today.

And as I said at a hearing this morning before the Senate Committee on Resources, the Governor is the person that has been elected to speak on behalf of the people of the islands, and it is in that capacity that he is here today.

You are quite aware that very recently the people of the islands awarded the Governor the Medal of Honor, the first time it has been so ordered to a sitting governor. And they have also named a hospital in St. Thomas after the Governor, the Roy L. Schneider Hospital and Health Complex, as evidence of their satisfaction with the Governor's performance.

Mr. Chairman, H.R. 3634, as you said, would revise the Organic Act to extend it and to permit the Virgin Islands to come into the 21st century. The provision of this Act is an impediment to a continuity of the Governor's authority when he leaves the island.

It is important that anyone dealing with the Government of the Virgin Islands through the Governor be assured that any negotiations or contracts that they have with the government by way of the Governor of the Virgin Islands are intact when he is physically absent from the territory on official business, and it should not be construed as the Governor being out of the territory and, therefore, not be able to perform his duties.

I think that provision may have had some relevance in the horse and buggy age. It doesn't today when someone can be reached instantaneously through our high tech means of communication. I think it is important that we recognize that a territory, like any State, could only have one governor, and the President of the United States, when he leaves the country, he is still the President of the United States.

So I think it is important that it be understood that we would like no less for the chief executive of the Virgin Islands, that when he is temporarily absent, he should not be considered physically absent from the territory.

Also, Mr. Chairman, H.R. 3635 is a bill which has been quite misunderstood and misquoted in the local paper. I would like to

clarify that for those who have so reported it. This bill directs the Secretary of Interior to enter into an agreement with the Governor of the Virgin Islands upon request to permit the Governor to have authority to manage the Christiansted National Historic Site.

It is part of the Governor's overall plan to improve the waterfront areas on both St. Thomas and St. Croix. So it is not that the Governor is asking for title to the National Historic site on St. Croix. He wants to manage that portion that is in his overall improvement plan for both St. Thomas and St. Croix.

Mr. Chairman, without further ado, I would like to introduce Governor Roy L. Schneider, the Governor of the Virgin Islands, who will speak on both bills on behalf of the people of the Virgin Islands.

### **STATEMENT OF DR. ROY L. SCHNEIDER, GOVERNOR, U.S. VIRGIN ISLANDS**

Governor SCHNEIDER. Good afternoon.

Mr. GALLEGLY. Welcome, Governor, and thank you, Congressman Frazer, for your opening comments.

Governor SCHNEIDER. Mr. Chairman and distinguished members of the committee, I am here today to discuss two bills which affect the Virgin Islands. But before I take up the business at hand, let me take this opportunity to personally thank you, Mr. Chairman, for all the help you provided immediately after the storm. We needed you, and you were there.

Our recovery would not be possible were it not for your involvement and personal attention and understanding. Your ability to deal with the Federal Emergency Management Agency has certainly worked to our benefit, and I want to particularly thank you for your follow-up visit to the Virgin Islands to make certain that we are continuing to receive the assistance so necessary after disasters of this size.

Now, Mr. Chairman, I know I have turned in my message to you, and what I would like to do is to quickly summarize these two bills. The first bill concerns having the management of part of Christiansted, which is the eastern part of St. Croix, the largest island—Christiansted in the east, Frederiksted to the west.

There is a portion there right at the wharf that is managed by the Interior Department through the National Park Service. The Chairman of the committee, Mr. Young, visited St. Croix and noted firsthand the deterioration of the buildings. As I understood it, from 1972, there was some agreement between the Interior Department, National Park, and the Government of the Virgin Islands to fix this area up. It is more than 20 years. Nothing has been done.

Now, taking over this government a year and a half ago, reviewing what ought to be done, we are fixing up the waterfront area in St. Thomas, the other island, the capital. We want to do the same thing for St. Croix. The problem we are having, Mr. Chairman, is not that we don't have the money, we don't have the plans, the problem is the National Park Service.

They want to maintain this area as "historic." We are saying to you, which I am putting with tongue in cheek, let us manage this area. Even though reading the message from Mr. Murkowski in the Senate to the President, where he indicates that transferring all

excess Federal lands to Guam, all excess Federal lands were transferred to Puerto Rico, all excess Federal lands are going to Vieques. We haven't taken that route. Perhaps we ought to.

We are simply saying give us a chance to take an area that is important, not only as a historic site, but also for the economy of St. Croix. We now have tourists going to St. Croix more than we did before. In 1994, 104 businesses were lost in St. Croix; the gain on my administration, 38 new businesses. Does that say that we are trying to turn things around and doing it well?

We have for you not a dream, not a pie-in-the-sky idea. We have for you a plan, Mr. Chairman. This is what we are going to do with the Christiansted area. We are going to take this area that we want to put grass all around, and we are going to put the historic change, historic benches, lighting.

I am sure you must have heard the past governor asked the National Park Service to light this area. They refused. Two tourists were killed in that area. I do not want a repeat of that. We have the plans there—computerized drawings—of what we will do with the entire site. And if your staff will take a moment to look at them, you will see that we are not dreaming.

We already have everything to go, and we have the funding in place. I don't see why there is opposition from a Federal agency to an area—a government that is changing, moving, and indicating that we have a sense of what is necessary.

In this transfer of management, we are saying to you, Mr. Chairman, that when it happens, if we do not go along with these plans that we have in a timely fashion, not over 20 years that they have not worked, we will then let it go back to the Interior Department if that is so. So we are serious about what we are doing.

But we cannot have concern of the businesses that are now beginning to make it being pushed away from the people who come to their shops because the National Park Service—they don't think it should be there. Ask your Chairman, Mr. Young, how he found these buildings that they claim should not be touched.

I am saying to you I recognize as a physician the seriousness of making sure that we do what we said we will do and making sure it is done right. So I then will ask you to approve this area. We cannot go on what happened in the past. We are telling you what we plan and what we intend to do.

The long and short of it is that the management of Fort Christiansvaern by the National Park Service has been like having a part of Christiansted declared foreign soil. H.R. 3635 would require the Secretary of Interior to enter into an agreement with the Governor that puts management of the fort back in the hands of the Government of the Virgin Islands. And I ask you to approve this bill and let us start doing what is right for the people of the Virgin Islands and the Federal Government and our nation.

The second bill, Mr. Chairman, has to do with bringing the Virgin Islands government in line with what is done now. When the Governor leaves the Virgin Islands, by the Organic Act, which is presently the constitution of the Virgin Islands, which the Congress of the Virgin Islands all right to change through the territorial clause, we are asking you to make it possible that the Governor can continue to have control of the government.

Who is ready more than the Governor? Who is really the lightning rod for information to deal with investors, to deal with folks who are getting their—to bring us out of our problems? The Governor cannot in the short time bring someone who is acting up to date with all of the information that is necessary to continue our government activities.

We have asked that it be placed in law that when the Governor leaves the Virgin Islands, he retains control of the territory. Right now today because the Lieutenant Governor is not in the Virgin Islands, the Governor of the Virgin Islands is the Commissioner of Finance.

I have before me from our Virgin Islands session law. More than 25 times when the Governor left the Virgin Islands and the acting governor, sometimes the Lieutenant Governor, sometimes the Commissioner of Finance, vetoed bills, changed the laws, and just caused confusion.

I think with the new technology that we have—a fax and all the different telephones, there is really no need for this. When the President leaves America, he still retains his control of the government. We should be able to do the same things. That is truly the position of the Virgin Islands people.

A local newspaper that usually acts against our administration sided with us by stating in the editorial, "We are with Governor Roy Schneider on the issue of removing acting governor status from the Lieutenant Governor when the Governor is off island. It is like using carbon paper in an era of photocopiers, faxes, and e-mail." And it went on and on.

The issue is not one of who is acting governor. The issue is that the Governor needs to have some continuity in running the business of the Virgin Islands, Mr. Chairman. I am ready to answer any questions that you might have on these two issues.

[Prepared statement of Governor Roy L. Schneider may be found at the end of the hearing.]

Mr. GALLEGLY. Thank you again for being here, Governor. Just a couple questions back on the Christiansted issue. Under the current management of the historic site, could you be a little more specific with problems that you have identified with the status quo?

Governor SCHNEIDER. The problems that we have identified basically are two: inactivity; no repair. Those are two. If you were a tourist coming to that area and seeing the fort, seeing the custom building, and seeing the general area, it looks terrible. That is not part of my operation.

You have been in the Virgin Islands and see what I do to deteriorated buildings. It should be done. The Government of the Virgin Islands and those properties run by us should not look broken down. No one should take 20 plus years to do repairs to those buildings. It is unacceptable.

Second, when it comes to people being able to park in the area, we should develop the parking area and charge for it. We can have revenues from that to take up the management. Thirdly, it is utterly ridiculous that we can accept that citizens coming from elsewhere or anyone should lose their lives because of inactivity, insen-

sitivity that you cannot light an area when requested by the Government of the Virgin Islands.

The other Administration, Governor Farley, did exactly that. I think it is terrible. It is terrible for not only the Virgin Islands, it is terrible for the United States that this should happen. I do not want a repeat of that, and we swear to you that give us a chance to show what we can do. We have done it already with many other areas.

We now are getting ready to do it in St. Thomas. Fortunately, in St. Thomas, we have funding for that repair of the shoreline from the transportation area, and they are working with us also to do that. For example, we are putting a boardwalk—an area to walk from Christiansted on the coastline all the way to the other area, making something for tourists and indeed for the residents. They want us to stop at the line of the fort, go back up on ground, go around, and then get back on the boardwalk. This is utterly ridiculous, Mr. Chairman.

Mr. GALLEGLY. Governor, obviously, there was significant infrastructure, as you have shown on your tentative plans there, and you have talked about having the revenue to make this happen. And, obviously, there is going to be an ongoing cost of operation. Do you plan on using user fees or would there be significantly greater fees to the visitors visiting?

I visited there, you know, just this last year, and historically it is an absolutely amazing place and I think even greater potential than exists today. And I have to agree with you on that.

But do you see significant increases for visitors who would want to visit the fort and visit the area? You mentioned parking fees, which I guess wouldn't be significant, but what about those who would want to visit the fort? What is it? Two bucks now or something like that?

Governor SCHNEIDER. Yes. But I do not see this—

Mr. GALLEGLY. Or do you think it just increases the economic development of the area as far as shopping and things like that?

Governor SCHNEIDER. Yes, it does. And it helps the businesses. In the local newspaper from St. Croix, we have some copies there where the businesses are crying out, "What are you trying to do to us? We can't have these folks come into our shops? They have to go way down in the middle of town. It doesn't make any sense."

Mr. GALLEGLY. But you don't see it costing the visitors there any more money to visit the historic aspects?

Governor SCHNEIDER. Of course not. We think that we are simply developing something nice or nicer than it is now for visitors to see. It is not a matter of increasing costs.

Mr. GALLEGLY. And the economic development in the forms of commercial enterprises would benefit St. Croix and the VI—

Governor SCHNEIDER. Definitely.

Mr. GALLEGLY.—through that economic development? How have you been received by the Park Service?

Governor SCHNEIDER. Well, in essence, again, I hate to say it, but I will say it publicly. The approach of the Park Service has been close to colonialism. The superintendents who run these parks believe that they were sent by God to control the Virgin Islands and

other places. They totally don't hear, I believe. Something is wrong with the auditory nerve.

During a storm, in St. John when we needed to get to the other side of St. John, one of the superintendents had the gall to suggest to us we cannot go through on the road that had already been cut. We simply wanted to clear the road and let the people go from one side of the island to the other.

He insisted, "You can't do this. You are destroying the environment below." "What about the people who can't go to the Puxa area," I indicated to him, "if another storm comes? And that is the only way to go. We will go." If he gets in the way, we will bulldoze him over.

Mr. GALLEGLY. Governor, with all due respect, I wish you could be a little more candid with our—I appreciate you being here, Governor, as always. I defer at this time to the ranking member, my good friend, Congressman Faleomavaega.

Mr. FALEOMAVAEGA. Mr. Chairman, I too would like to recognize our good friend and representative for the Virgin Islands, my good friend, Congressman Vic Frazer, and certainly welcome the presence of Governor Schneider also before our Subcommittee.

I am very happy and delighted, Mr. Chairman, that you have taken the initiative to have our Subcommittee consider these two bills that relates to the needs of the Virgin Islands. And I sincerely hope that it will be positive.

I do have a sense of concern with one of the bills concerning the historical park. I hope that our good friend, the Chairman of the National Park Subcommittee, will defer to us and allow us to take this legislation to its fullest measure so that there won't be any conflicts, obviously, from the testimony of Governor Schneider by the statement relating to the fact that the National Park Service is totally objecting to this proposed change.

And without the benefit of their testimony, and I don't see that we have any representatives of the Park Service before us for this hearing this afternoon, I hope that maybe at a later time we will have their presence before our Subcommittee. But saying that, Mr. Chairman, I welcome the Governor's statement.

I think in principle I hope that our friends of the Park Service will be compassionate and fully understanding to the needs of the Virgin Islands as expressed by their elected leaders, and hopefully that there is a sincere effort on the part of the Park Service to work with the leaders of the Virgin Islands.

And it is unfortunate if Governor Schneider makes the categorization or Statement of the fact that it is almost a colonial period of reign there in the Virgin Islands, and hopefully this is not the case. But I do want to thank Governor Schneider for his statement and also Congressman Frazer for bringing this two measures before the Subcommittee.

Just one question that I have about the problems of the Governor leaving the territory, and I am sure as you are aware, Governor Schneider, we are all caught in the same situation as well. Is it very often in the Virgin Islands that the Lieutenant Governor also leaves the territory where then you end up with a member of the cabinet having to become the acting governor?

Governor SCHNEIDER. Once every month.



Mr. FALEOMAVAEGA. So you feel that this also has the support of the legislature of the Virgin Islands, that by amending this provision of the Organic Act that the Governor be treated just like you would the President? Where you go you are still the Governor, obviously, but for purposes of amending or signing or vetoing legislation, this is something that ought to be kept strictly within the providence of the authority of the Governor, and this is basically what this amendment proposes to change?

Governor SCHNEIDER. Yes, sir.

Mr. FALEOMAVAEGA. All right. Thank you, Mr. Chairman, and thank you, Governor Schneider. Did you have a comment?

Governor SCHNEIDER. Yes, sir. Mr. Chairman, I didn't get a moment to mention another part of our consideration hearing in bill form—is the question of the bonds—the debt payment of bonds. It was suggested by Mr. Frazer that we bring this up because we are asking the Congress to also have another change in the Organic Act, and this change is in the Organic Act of the Virgin Islands.

We must do our debt service for bonds through something called priority debt. We are asking it to be changed to parity debt. In priority debt, after you float bonds, you place them in priority—one, two, three, four—for paying. In parity, all the bonds are floated on an even keel—even level.

I am saying to you because of priority, which we are perhaps the only jurisdiction that has this when it was placed in our Organic Act some years ago—it hasn't been changed—we know the floating bonds and the collateralization of those bonds are sometimes four to five times, which is unnecessary because it is not required by the bonding agencies.

It is required by law so we now are placing all this collateralization. So when we float bonds, which has been done in the past, we have to overcollateralize by placing moneys to pay it off, which we use our excise tax on rum, which the Congress has been so kind to have us retain in order to pay the debt.

But in addition to that, we have to place over five funds, which decreased significantly our cash-flow, in order to collateralize these priority bonds. I am saying to you if we can change from priority to parity, not only would we be able to perhaps release some of those collateralization, we will be able now to float bonds and not have to pay as much to have them floated. Why do we have to do it? Because we don't have the funding to do all the necessary repair that we have to do because of the destruction by Hurricane Marilyn.

But, more importantly, right now, we are on the decrees from the Federal Court for three or four projects. One of them we are being charged 2 to \$4,000 a day. So I am saying to you in order for us to immediately correct the problem, we need that change in the Organic Act again from priority to parity debt.

Mr. GALLEGLY. The gentleman from Guam, Mr. Underwood.

Mr. UNDERWOOD. Yes. Thank you, Mr. Chairman, and thank you for your testimony, Governor Schneider, and yours as well in the introduction of your bills our friend and colleague, Mr. Frazer. I just have a couple of questions. Have you discussed any of your plans with the National Park Service, and what has been their reaction?

And it seems to me that given the nature of this bill, which really extends a great deal of approval authority to the Secretary under this, that there would be very few objections to it. And I am kind of surprised by your comment that the National Park Service perhaps has not been as collaborative as they could be.

Governor SCHNEIDER. Mr. Member, we even met with the National Park personnel on the site in St. Croix with the Chairman of the committee, Mr. Young, and their position was the same—resistance. I don't see what else we can do. We called Mr. Roberts several times to discuss personally with him. We were not able to get through. It is something we have spoken to Mr. Stayman, which is somewhat below, to get this done. But, again, it has to be done by someone who can say yea or nay, and this is not possible.

Mr. UNDERWOOD. OK. How did this property come into the hands of the National Park Service? Was it originally taken for this purpose? Was it always Federal property?

Governor SCHNEIDER. I think it was always Federal property, the same as Water Island. And, again, that is another area—that we are trying to have that area transferred to the Virgin Islands Government. We did have some cooperation, and we have gotten a portion of it—the landfill area, the beach, the part where the hotel is, the roads—turned over to us. And they are saying that we would not do in Christiansted.

As soon as we got the transfer of Water Island, an island outside of St. Thomas, turned over to us, in a matter of one week, I had the entire island with electricity. In a matter of one week, we took up all the debris that was there.

In a matter of one week, we developed a commission to go in and talk with the people that live there and come up with plans, not the Governor's plan, a plan of people of the Virgin Islands with insight, with experience. And we are getting this worked out.

We are now awaiting for them to turn over the property where the people are now living. That is a complicated issue because they are trying to deal with a person who, what you call a lease owner for that area, but that should be done. And I think they are moving ahead, and we are asking them, "Let us move ahead so we can take this area."

So from the experience with my government—I can't speak what happened before—but since we took over, we have demonstrated to the Interior Department that when given the responsibility for anything, we move rapidly, and we do it right.

Mr. UNDERWOOD. And I also just want to make a brief comment on the bill amending the Organic Act. I notice that in this morning's testimony you were with the Lieutenant Governor on this. Has he rushed home?

Governor SCHNEIDER. I think he took his video with him. No. The Lieutenant Governor, as you know, is now a candidate for the delegate seat so anything that would enhance that position I suppose is worth talking about. But I speak for the people of the Virgin Islands.

Mr. UNDERWOOD. Very good. And I appreciate that and understand that fully. Thank you, Governor.

Mr. GALLEGLY. Governor, thank you very much for being here. As always, it is a pleasure to see you. Congressman Frazer, it is

always a pleasure to have you before the committee, and we look forward to continuing to work with you in a very positive way. Thank you very much.

Now we have our second panel. We have Mr. Allen Stayman, Director of the Office of Insular Affairs, and Roger Kennedy, Director of the National Park Service. Mr. Stayman.

#### **STATEMENT OF ALLEN P. STAYMAN, DIRECTOR, OFFICE OF INSULAR AFFAIRS**

Mr. STAYMAN. Thank you, Mr. Chairman. Mr. Chairman, members of the Subcommittee, I am pleased to be here today to discuss the provisions of H.R. 3634 and to discuss the second annual report on the Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement in the Commonwealth of the Northern Mariana Islands.

First, with respect to 3634, Section 2 of the bill provides that neither the Governor nor the Lieutenant Governor of the Virgin Islands need relinquish authority while traveling outside the Virgin Islands on government business.

In light of today's technology, we believe the proposed amendment is appropriate, and the Administration supports enactment of Section 2. Section 3 of the bill deals with bonding authority of the Virgin Islands when its bonds are secured by the coverover of Federal excise taxes on rum.

Section 3 would allow the Virgin Islands to issue parity debt rather than priority debt. This change would place the Virgin Islands on a footing similar to other communities. The Administration has no objection to its enactment. I will now turn to Mr. Kennedy to discuss the other bill.

[Prepared statement of Allen P. Stayman may be found at the end of the hearing.]

Mr. GALLEGLY. Mr. Kennedy.

#### **STATEMENT OF ROGER KENNEDY, DIRECTOR, NATIONAL PARK SERVICE**

Mr. KENNEDY. Mr. Chairman, I am sorry that I can't agree with the Governor on a number of matters. We apparently have a respectful disagreement, both as to fact and as to obligation. First of all, may I submit my formal statement for the record, and then if I may speak—

Mr. GALLEGLY. Without objection.

Mr. KENNEDY. There are two Organic Acts here. One is for the islands and the other is for the National Park Service and System. The Organic Act of the National Park Service and System calls upon us to be trustees for the preservation and protection of the places selected by the American people—all of the American people to serve all of the American people.

We oppose the enactment of H.R. 3635 essentially because it is a park divestiture bill. It says that, "You will take out of the National Park System a park that is of national significance, that is part of a system that was developed on purpose for very good reason."

I don't think it is probably useful to take your time as a committee for me to debate with the Governor the mutual behavior of peo-

ple who work for the Park Service or people who work for the Governor.

There are, I think, a couple of facts that may be useful in the record, and they are these: first, the Water Island matter, to which the Governor referred, does not involve any parkland at all, and it has not occurred. There has been no transfer of land with regard to Water Island.

With regard to our holdings—that is, our responsibilities in the islands—let me just run through those quickly for you. There is the Virgin Islands National Park, which includes portions of St. John and portions of St. Thomas and Hassle Island, which is off St. Thomas. There is the Buck Island Reef, which is a national monument.

There is the Salt River National Historic Park and Ecological Preserve. Christiansted is the only national historic site. And the question arises has there or has there not been inaction with regard to the Federal taxpayers as acting through the National Park Service in recent years?

All of the historic structures in the care of the National Park Service are currently, despite budgetary difficulties, maintained in accordance with what are known as the Secretary's standards, which are true in all Administrations—the same standards.

Since 1980, about \$3.5 to 4 million of the Federal taxpayers' money—\$3.5 to 4 million—has gone, excluding repairs for hurricane damage, for the restoration and preservation of historic structures in this particular place.

Every year, the Federal taxpayers pick up the tab for about \$200,000 in annual maintenance of these properties, and about \$300,000 goes into programs in this park, which include the usual run of things we do in all national parks of an educational sort.

But in addition to that, and that is on-site talks in schools and civic groups and the like, 27 museum exhibits, five historic furnished rooms, 17 waysides, a big, handsome park brochure, which has been planned and completed, and, in fact, on a sort of everyday basis we are operating here just about the way I suspect that we are operating in all national historic sites.

What is before us is a proposal to take a unit out of the National Park System for developmental purposes. What is proposed, among other things, is the construction of a boardwalk that goes around the exterior of a historic fort, and the building of a restaurant in the commandant's quarters at Fort Christiansvaern. That is what is before us, Mr. Chairman. Do you want or do you not want to keep the National Park System entire?

[Prepared statement of Roger G. Kennedy may be found at the end of hearing.]

Mr. GALLEGLY. Is that the conclusion of your comments, Mr. Kennedy?

Mr. KENNEDY. Yes, sir.

Mr. GALLEGLY. Mr. Kennedy, correct me if I am wrong, but last month the National Park Service transferred the management of city of Rocks in Idaho to the State in accordance with legislation similar to this. Is this correct?

Mr. KENNEDY. I am not directly familiar with the legislation for city of Rocks, but I will certainly agree with whatever it is you tell me is true in that matter, sir.

Mr. GALLEGLY. You and Secretary Babbitt agreed to that transfer. Is that not correct?

Mr. KENNEDY. I don't believe that is a national historic site, sir, but if you—

Mr. GALLEGLY. I didn't say it was a national historic site.

Mr. KENNEDY. Oh, OK.

Mr. GALLEGLY. But I did say it was Park Service controlled land that provided for the benefit of the public, that the Park Service had jurisdiction over, that they transferred to the State. Is that correct?

Mr. KENNEDY. If you say so, sir. I am not familiar with the details of that proposal, nor do I know whether it went for developmental purposes or not.

Mr. GALLEGLY. OK. Today, and I will tell you that I believe this to be very similar in nature, there apparently or it appears to be an attempt to politicize this action as a park closure. Is that correct? That you are referring to this as a park closure, not a transfer of jurisdiction?

Mr. KENNEDY. It takes a unit out of the management of the National Park System, and it places it in the management of another entity.

Mr. GALLEGLY. Right, similar to what happened with the city of Rocks in Idaho, which came out of the jurisdiction of NPS and went into another jurisdiction; in this case, the State of Idaho. Do you see any parallel there?

Mr. KENNEDY. I don't much. This is a historic site with very significant historic buildings in it, visited by international visitors because of its historic character, and the National Park Service, as long as it remains in the custody of the National Park Service, would strive to sustain its historic integrity.

Mr. GALLEGLY. Well, of course, there is some, obviously, historic parts of the city of Rocks, and anyway maybe not from a historical building, but go back quite a ways as well. Let us just move on to maybe one other question, and then I will defer to my good friend from American Samoa.

If this did take place and the management of Christiansted went to St. Croix instead of the Park Service, there, obviously, would be some dollars saved to the Park Service. I think that is obvious. Is that some money that could be used to reopen campgrounds in Yellowstone?

Mr. KENNEDY. Oh, I suppose you could make that argument about closing Independence Hall, Mr. Chairman. You could save some money there too I guess.

Mr. GALLEGLY. OK. Well, are you suggesting that we do that?

Mr. KENNEDY. No, sir, I am not, nor do I suggest that we close this one either.

Mr. GALLEGLY. At this time, I would defer to my good friend from American Samoa, Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I would like to thank Mr. Stayman and Director Kennedy for their statements. I just want to make sure for the record in most expressed form, Mr.

Stayman, on behalf of the Secretary of the Interior that your office does not object to the proposed transfer of management of the Christiansted Historic Site to the Virgin Island Government. Did I hear that correctly?

Mr. STAYMAN. No. We, of course, are here representing the President, as well as the Department, and we have a single position, and that is in opposition to that bill.

Mr. FALEOMAVAEGA. You do not support it—

Mr. STAYMAN. No.

Mr. FALEOMAVAEGA.—as a matter of policy? So you are in support of the National Park Service objections to this proposed bill?

Mr. STAYMAN. Yes.

Mr. FALEOMAVAEGA. Mr. Kennedy, thank you for your statement. A couple of questions. What you are saying to this Subcommittee is that all the Congress needs to do is just simply transfer the authority and that will be the end of it. Is that basically your problem, that Congress should give direction, and it will be done?and the Congress can do what it wills. We are the Administrative Branch, and we do what the Congress tells us to do. But I was asked to testify today to offer the judgment of the National Park Service as to whether or not this unit of the National Park System should be given away to a State, and our judgment is that should not happen, sir.

Mr. FALEOMAVAEGA. And it is your opinion that the role of Denmark in its colonial period is one of the most historic aspects of this historical park? I have read some of the Dutch Colonies and historically some of the things that they have done, and I don't necessarily agree if that is a matter of tremendous history that one can be said that they are proud of. I don't know.

I haven't been to the historic park, and I was just wondering if the comments made by Governor Schneider is such that—I hear that both sides are saying that, yes, we really are making every effort to find common ground or for mutual agreement. Your basic position is that you just simply feel that the Virgin Island Government is incapable of maintaining the park. This is what I read in your statement, and correct me if I am wrong on that.

Mr. KENNEDY. In my statement to you, sir, I attempted to state as clearly as I could that our fundamental objection here is to the divestiture of a significant unit of the National Park System. We oppose that. I didn't comment myself on the financial capability of the Virgin Islands Government primarily because I personally have no knowledge of the degree to which the Virgin Islands Government is taking care of those portions of this general area which it already is responsible for.

There are a variety of judgments as to who is taking care of what well. I don't want to get into a discussion of that kind because I rather hope that when we get out of this room, the Governor and the National Park Service can get together on a program that works for everybody's interest, and, therefore, I don't want to get into a bicker about who is doing what to whom. I just don't think that is useful.

Mr. FALEOMAVAEGA. Well, with due respect, sir, unless if I read the statement wrong here, and I quote, "We wonder whether the territory possesses both the expertise and the financial resources to

manage the park well." And I continue, "The territory's record of managing cultural sites is uneven at best," and then you cited the Fort Frederick and the Fort Christian parks as falling short of the standards of the National Park System.

So it seems to me that this is an indictment, as far as I am concerned, that there is a question of whether or not the leaders of the Virgin Islands are capable of maintaining just this one historical site that they are asking for.

Mr. KENNEDY. It sort of comes down to how you or any of us here as a visitor would look at what the Park Service is doing and what the Virgin Islands Government has done with properties of equivalent value in recent years. And the testimony before you represents the professional judgment that, generally speaking, the Park Service is doing a better job of it.

Mr. FALCOMA. Thank you, Mr. Chairman, and Mr. Kennedy. Thank you for your statement.

Mr. GALLEGLY. There is currently a vote pending over on the floor, and we are going to have to run over there and vote. I would turn the gavel over to my colleague from American Samoa since he and Mr. Underwood won't be going over for the vote. But just before I leave, I can't leave without—I was sitting here thinking about Mr. Kennedy's suggestion about Independence Hall.

I happened to have the privilege of visiting Independence Hall just last week with my wife. We don't have very many weekends in Washington, and we did go up there, and what a tremendous place that is. And I still stand in awe very much, the same as I did the first time I took my children there many years ago. And with all due respect to the National Park Service, which I have a lot of respect for, I am not absolutely convinced that the State of Pennsylvania couldn't do a good job. I am not advocating that, but since Mr. Kennedy did bring that up for consideration—

Mr. KENNEDY. I didn't bring it up for consideration, sir. I thought the idea so ludicrous, that it would be compelling to suggest the analogy.

Mr. HASTINGS. Would the Chairman yield just for a moment on that?

Mr. GALLEGLY. Yes. I would yield to the gentleman from Washington.

Mr. HASTINGS. In light of that also, I think we can go no farther than this State and find some national sites that are administered very well by entities other than the Park Service.

Mr. KENNEDY. We concur, sir.

Mr. HASTINGS. Like Mount Vernon, for example, like Monticello, for example—

Mr. KENNEDY. Fully agree.

Mr. HASTINGS.—that do very well.

Mr. KENNEDY. Yes, indeed. We entirely agree.

Mr. GALLEGLY. While we go over to vote, I will turn the gavel over to my good friend from American Samoa, and perhaps he and Mr. Underwood can continue the dialog. Did you have some questions that you wanted when we came back? If you do, we will keep the hearing open. Otherwise, I don't want to hold the witnesses unless you wanted to ask a quick question.

Mr. GILCHREST. A couple of very quick questions? Mr. Kennedy, could you explain to us briefly how the Park Service gained title to this six acres in the beginning? And then what is it about the management of this property that could not be given to the Governor of the Virgin Islands?

Mr. KENNEDY. I don't know the specific history of this site, and we will supply that for the record. I do not know whether it was Federal property or not, and we will supply that to you.

Mr. GILCHREST. But it is, in fact—does the Park Service have full title to these six acres?

Mr. KENNEDY. Yes, I believe so. The answer is yes. And maybe I can supply it right now if you would like an answer for that.

Mr. GILCHREST. Was there ever an agreement from the very beginning historically as to the relationship between the Park Service, the Virgin Islands, and these six acres as to its continuing status?

Mr. KENNEDY. In 1952, there was an agreement which essentially was a cooperative one between the Service and the Virgin Islands Government.

Mr. GILCHREST. And what was that agreement? Was it a cooperative agreement that—

Mr. KENNEDY. Well, that we would—it is in the middle of a town, and the intention was that people would get along better, obviously, than they are at the moment. And that is not a joint management agreement. It is a cooperative agreement.

Mr. GILCHREST. What was the longevity of that cooperative agreement? And suppose that the people in the community of the Virgin Islands decided to take away their part of the deal?

Mr. KENNEDY. It had no terminal date. There was no sunset.

Mr. GILCHREST. There was no sunset. Suppose now as the Governor is coming here saying that the deal was fine while it lasted, but we would like to manage this particular property. And then could you give me a specific reason why the Park Service feels that they don't want to turn over the management of this park even though the management of the park as designed in the bill, as I can see it, will be virtually the same as it is now?

Mr. KENNEDY. Well, it depends on who is responsible, of course, for making the final decisions as to what you do in these places. This is a collection of buildings associated with a fort, a government house, and a succession of other largely neo-classical buildings along a waterfront and a very important Danish town or initially Danish, subsequently ours.

We are in the history business. That is what we do. We try to help Americans understand about their history—all of the history, the good part and the bad part. And that is what we do for a living.

Mr. GILCHREST. Just if—let us suppose it was turned over to the Virgin Islands. Is there an estimate as to the amount of money the Park Service would save?

Mr. KENNEDY. The annual budget of this park is about \$300 operating and about \$200 on average and what we put into cyclical maintenance; that is, taking care of the place.

Mr. GILCHREST. So you are saying about \$500,000 annually?

Mr. KENNEDY. Probably and there undoubtedly—I know that there has been more money than that put into the care of these



buildings since the Nation took them over. So how much additional work you got to do to maintain old buildings, it is continuous. You could pretty much guess.

Mr. GILCHREST. Thank you very much.

Mr. FALEOMAVAEGA. [presiding] Thank you. I would like to ask a personal favor of Mr. Kennedy. Congressman Williams would like a minute with you—

Mr. KENNEDY. Sure.

Mr. FALEOMAVAEGA.—so I would like to ask you if you could wait. He is coming right back from voting.

Mr. KENNEDY. Oh, absolutely. I am even at his disposal.

Mr. FALEOMAVAEGA. I am sorry. The gentleman from Guam also has some questions.

Mr. UNDERWOOD. Yes, sir. Thank you for your testimony. In your testimony, you basically articulate some reasons why you are opposed to this transfer of authority. And reading your testimony in a cursory fashion, you make a statement that you are concerned about the capacity of the Virgin Islands to successfully deal and manage this property.

You are also concerned about the historic significance of this, that this is part of the mandate of the National Park Service. And in the judgment of history, this is a valuable historical property. And then somewhere in the middle of your testimony, I found very interesting logic that you are talking about here.

And you connect it to a larger move in which you say that in February of '95 you opposed a bill that called for a study of the National Park System with a view toward authorizing certain units. "Passage of this bill would in a small but dangerous way begin that process. Each of the 369 units of the National Park System in the 49 States, D.C., American Samoa, Guam, Puerto Rico, and the VI was established by an Act of Congress, presidential proclamations, or Secretaries' orders."

I would call that, you know—we see many of these kinds of statements in reference to particular bills. I guess the shorthand way of looking at that is the slippery slope theory. Once you do it for one, you are going to have to end up doing it for others. So of those three reasons, which is your primary concern?

Mr. KENNEDY. Oh, I think it is really two that are very closely linked. One of them is that this is a place of national and international significance that belongs in the National Park System. It is important. That is what the Congress decided the first time.

Secondly, it needs to be treated by people who are, generally speaking, pretty good at dealing with national historic sites. They get trained to do that, and they do it pretty well. It is important as well that those folks get along with local people. This is true every place that we operate—368 places.

And in doing that, it is also essential that we recognize increasingly that there are cities and towns and territories that have got financial and other problems. It is just not true that cities, towns, and States are rolling with money and are going to do a wonderful job with places that are given to them unless they change their character substantially. Building restaurants in and boardwalks around historic structures may very well not be a good way to sustain their historic fabric.

Mr. FALCOMA. Would the gentleman yield?

Mr. UNDERWOOD. OK.

Mr. FALCOMA. Just for one second. I would like to invite our good friend from the Virgin Islands, Congressman Frazer, up on the dais since he is the recognized expert on the Virgin Islands before this committee. We would invite him up here and certainly would welcome any of the questions that he might want to raise with our panel members. So go ahead, Bob.

Mr. UNDERWOOD. OK. We are not really concerned with the capacity—I mean, I know that in some respects they are all very much linked. But it seems to me that the concern about the slipper slope, if we do this to one, we are going to do this to all, are you telling me that all of the units that are currently in the National Park Service are all dealt with in the same way? There are no collaborative agreements? There are no other side agreements and cooperative agreements? There is not a kind of diversity of arrangements that are possible?

Mr. KENNEDY. There are but this bill calls for the divestiture of management responsibility from the National Park Service to a State or to a territory. That being true, that is a lot different than a cooperative agreement, and that is a fundamental difference, and we do oppose that, sir.

Mr. UNDERWOOD. Right. So the issue really is control over the property—over the park?

Mr. KENNEDY. That is one word. You could say responsibility for. That is another word.

Mr. UNDERWOOD. Well, as I read the bill, it says here, "To transfer the authority to manage upon a determination of the Secretary of Interior that the Government of the VI has the financial ability and commitment to maintain," so that, I think, deals with one issue very successfully.

"Retain for the U.S. fee title to all property comprising Christiansted National Historic Site." Apparently, the Virgin Islanders support that. I think the people of Guam if this were in Guam would support a little bit stronger version of that. "Require the Government of the VI to continue to use the historic site for the purposes for which it is used."

In my mind, that certainly extends to the Department of Interior and Secretary of Interior the kind of authority and, if you will, veto power that will continue to manage the site in a way which fulfills the purposes of a historic site. And, furthermore, in the last section, it authorizes the Secretary to terminate the agreement and revoke the authority.

Mr. KENNEDY. Well, it is either in the National Park System or it is not. If the responsibility for management is in the hands of somebody else, it is not in the National Park System, and we think it should be.

Mr. UNDERWOOD. OK. In this instance, I think that there are a number of safeguards that would cause one to possibly think that this is a distinct possibility and a good idea worth exploring. I would also draw attention in your statement that all of the units and all of these units in referencing all of the National Park Service properties—all of these units represent diverse public resources under our permanent stewardship.

And the word permanent strikes me as odd in this instance because really we are talking about diverse properties each individually acquired under either an executive order or under an Act of Congress, which, of course, is at anytime changeable.

Mr. KENNEDY. As long as they are ours, we have got a responsibility to take a position, as we have been asked to take today, with regard to what our responsibilities are. Of course, the Congress makes the laws.

Mr. UNDERWOOD. OK. Thank you.

Mr. FALEOMAVAEGA. Mr. Frazer.

Mr. FRAZER. Mr. Kennedy, are you opposed to taking the Kennedy Center out of the Park System? Last year were you opposed to that?

Mr. KENNEDY. The Kennedy Center is a performing arts facility in the city of Washington for which for many years has been trying to raise the aggregate, I guess, of about \$100 million to take care of its needs. Its management concluded that it was ready to not only raise that kind of money, but to raise about that amount of money more.

So under those circumstances, where it is a performing arts center, not a historic building, not a historic structure, no obligations on our part there, whatever, except under those circumstances to mow the grass, it seemed like a pretty good idea for that to be distinguished from other national park holdings that have historic or natural integrity. That is a very special case.

Mr. FRAZER. Mr. Kennedy, is it true that you are an attorney?

Mr. KENNEDY. Yes, sir.

Mr. FRAZER. So could I ask you a yes or no question and get a yes or no answer?

Mr. KENNEDY. Since I am an attorney, I doubt it, sir, but try it.

Mr. FRAZER. Did you oppose the taking of the Kennedy Center last year out of the Park System? Did you, Mr. Kennedy, oppose it?

Mr. KENNEDY. I did not oppose the——

Mr. FRAZER. Did you oppose it?

Mr. FALEOMAVAEGA. Let the gentleman respond, counsel.

Mr. KENNEDY. If I may. Counselor, I did not oppose the movement of the national performing arts center at the Kennedy Center from its ambiguous status, which it was, partly managed by the Park Service, partly managed by the Board, which, as you know, as an attorney, is represented by both Houses of Congress and a large number of private citizens. There was no clear management responsibility there, sir, as you know.

Mr. FALEOMAVAEGA. Would the gentleman yield?

Mr. FRAZER. Yes.

Mr. FALEOMAVAEGA. This raises a very interesting point here to Mr. Kennedy, and please don't think that we are trying to—here is a classic example. I am sure that States of the Union do not have Offices of Territories under the jurisdiction of the Secretary of the Interior.

Now, we have two subdivisions under the authority of the Secretary of the Interior, one in terms of one having jurisdiction over national parks, and the other one over policy of political development as far as the Virgin Islands respecting the leadership of the

Virgin Islands, and seeing that here we have someone or a member of the President's Cabinet just totally opposed, both as a matter of policy, as well as not even having a national park, to be worked out on a mutual arrangement and still feel that if some kind of an MOU or an agreement could be reached between the Secretary of the Interior and the Government of the Virgin Islands, wouldn't you think that this might be a better way to proceed, Mr. Kennedy, than——

Mr. KENNEDY. Oh, an MOU, a mode of operating together in a cooperative way, absolutely. That is what should have happened in '52. It is a very desirable outcome. What isn't is the transfer of the fundamental authority and responsibility. Of course, we should work this out. That is one of the reasons why my testimony, I hope, is not very argumentative today. I am not trying to pick at the management of the Virgin Islands or discuss their financial capability or desire. I don't think that is productive.

Mr. FALCOMA. Well, my point here is that the Office of Territories, in my opinion, now is deferred to the National Park Service and say, "We want to keep our park, and the heck with the opinions and the judgments of the leaders of the Virgin Islands." And this is where I am seeing a conflict where who do we really depend or look toward to for direction as a territory?

Mr. KENNEDY. Well, I try to be responsible for the National Park System. I can't speak for any broader responsibility than that. Mr. Stayman may be able to.

Mr. STAYMAN. Yes. I don't know what further I can say. We see our mission as trying to help the Federal Government manage its relationships with the islands. They really require people to follow them on a day-by-day and week-by-week action. We are not an agency that has any capability to manage assets. We are primarily a granting and policy office.

What the Park Service is doing is of a fundamentally different nature, and it is very appropriate that they do that. That is the way the government has been structured, and we support the position of the Secretary and the President on this matter.

Mr. FALCOMA. Maybe this is also the sense of what I am trying to get at, just a statement of the fact that is it my understanding that your office is the lead Federal agency advocating the interest of the territories before the Federal Government, or has this changed as a matter of policy?

Mr. STAYMAN. We generally find ourselves in the position of being the greatest advocate for the interests of the islands. That doesn't mean that we always support the position of the Island.

Mr. FALCOMA. But you are the lead agency representing the territories that look into the policy decisions affecting Federal policies toward the territories?

Mr. STAYMAN. That would be a fair statement if you would limit it to the relation between the Federal Government and the islands. You know, that is a very broad brush.

Mr. FALCOMA. Mr. Frazer.

Mr. FRAZER. Mr. Kennedy or Mr. Stayman, does the Park Service consider the economy or the well being of the people of any State jurisdiction over which it has whether it is a national park or any property under its control?

Mr. STAYMAN. I am sorry.

Mr. KENNEDY. I think I can respond to that question. The answer to your question is yes.

Mr. FRAZER. Are you aware of the fact that—and I am not straying from the point because it is obvious from your testimony that the National Park Service seems to make as a priority its interests in this property that we are speaking of as opposed to what the Governor has said.

The Governor has said it is part of an overall plan, and the issue here is economy. Nowhere does this bill state that it wants to divest the National Park System of the national historic site and Christiansted. The bill doesn't say that, but somehow you are capable of reading that into it. Are you aware that on the Island of St. John there is a place called Caneel Bay as a resort, Mr. Kennedy?

Mr. KENNEDY. Yes.

Mr. FRAZER. Do you realize that Caneel Bay is the largest employer on the Island of St. John?

Mr. KENNEDY. Yes. Excuse me. I don't know what is the largest employer.

Mr. FRAZER. Well, it is. Do you recall me trying to get an extension for lease on Caneel Bay resorts so the bankers trust can take it to market and you responding by saying the National Park Service is primarily concerned with protecting the park, not necessarily the economy of the local jurisdiction?

Mr. KENNEDY. That was not my position, nor was that my statement. I said—you are speaking of a private conversation between—

Mr. FRAZER. No, sir, written.

Mr. KENNEDY. Written? Good. Then I am quite sure what my response was. My response was and is that we have really three responsibilities. First, there was a donor in that instance who had very specific conditions under which this donation to the Nation was made and which created that property as an income generator for the Island. Without that donation, there would have been no development.

Second, the National Park Service has an obligation to stay within its statutory authority, which is in that case statutory. And, finally, of course we have an interest in the economic welfare of that Island and continue to do that. That interest is very intense, and we are working at that.

Mr. FRAZER. Mr. Kennedy, it seems as though you have totally disregarded the Governor's request or the bill as it relates to the economy or the well being. Because if you recognize that Caneel Bay Plantation Resort is the largest employer on the Island of St. John, then you would recognize its importance to the economy.

If you are concerned about the people, then you would not oppose an extension of the lease that would permit that plantation resort to continue employing the largest number of people on that Island. Would that be true?

Mr. KENNEDY. No.

Mr. FRAZER. It wouldn't be true?

Mr. KENNEDY. It would not be true that a position to adhere to the law and to the terms of a gift is in itself a statement that we have no concern for the economic welfare of the Island. Those two

things are not the same. We do have an interest in the economic welfare of the Island and take that very seriously. We also have obligations under the law.

Mr. FRAZER. Is there any evidence that you have in your position that has not been proffered to this committee that the Government of the Virgin Islands isn't capable of managing that site in St. Croix?

Mr. KENNEDY. Oh, we are now back to Christiansted?

Mr. FRAZER. Yes, we are. You speak of divestiture and you speak of—as Congressman Underwood read and Faleomavaega read, in your own testimony you spoke to the financial ability of the Virgin Islands Government to manage the historic site in St. Croix. I am asking you is there any evidence that we are incapable of doing so?

Mr. KENNEDY. If you would like us to submit evidence to this committee indicating that the Virgin Islands Government is not taking care of the property currently under its custody to the same degree that the National Park Service is taking care of the property under its custody, we could submit that to you, sir.

It is not, however, my view that we should be here in the position of attacking each other with respect to how well we are doing our respective jobs. At least to the extent that the National Park Service is a presence there, we are going to be in the same town together. And I don't think that is a good idea so we are not going to attack the government.

Mr. FALEOMAVAEGA. Without objection and certainly I think it would be great for the edification of the members of the Subcommittee, please do submit the evidence——

Mr. KENNEDY. Sure.

Mr. FALEOMAVAEGA.—Mr. Kennedy, for the record in fairness to you and your office. So we want to leave this open, as well as for Governor Schneider and the Virgin Islands Government to have their presentation of facts so that this will certainly be very helpful to the members of the committee.

Mr. KENNEDY. Thank you, sir.

Mr. FALEOMAVAEGA. I thank the gentleman from the Virgin Islands. And the gentleman from Maryland.

Mr. GILCHREST. I had a couple more questions. How many people are employed by the Park Service on this particular historical site?

Mr. KENNEDY. Twelve.

Mr. GILCHREST. Twelve?

Mr. KENNEDY. Twelve permanents.

Mr. GILCHREST. Twelve permanents?

Mr. KENNEDY. Yes.

Mr. GILCHREST. How many of those 12 permanents are from—is this on St. Thomas?

Mr. KENNEDY. It is on St. Croix.

Mr. GILCHREST. St. Croix?

Mr. KENNEDY. Yes. We have a presence, as you know, on both the other islands as well.

Mr. GILCHREST. I went to Bluebeard's Castle in 1965 when I was younger and in the Service—a great place. How many of the permanent employees on St. Croix at this historical site are from St. Croix or are from the Virgin Islands?

Mr. KENNEDY. The superintendent is here, and he knows these facts. So if you don't mind, I will just get him up here to answer that question.

Mr. GILCHREST. That is fine. I do that all the time.

Mr. KENNEDY. This is Francis Peltier. He is the superintendent. How many, Francis?

Mr. PELTIER. With the exception of possibly two people, every employee is from the Virgin Islands—from that area.

Mr. GILCHREST. Would they be retained as employees if the management were transferred to the Governor of the Virgin Islands?

Mr. PELTIER. That is hard for me to answer, sir, since the Park Service would no longer be in charge then.

Mr. GILCHREST. I am a strong advocate of the Park Service. I am a strong advocate of the idea of entrusting to the public entity our historical traditions and whether it is a one-acre parcel or whether it is the Yosemite National Park or Glacier National Park or Assateague in Maryland. But I also think if we are to retain the essence of the Park Service and its idea, then I think it is time that we reviewed how all of that works.

And it also seems to me that if we have a very ardent, strident backlash or very ardent, strident position to not releasing even the smaller areas to an entity that could probably manage it as sensitively and as well because we think it sets a bad precedent, then the backlash to that will be like a huge gusher.

In other words, I think unless we can find some ways of releasing some of the areas to an entity, for example, like the Governor of the Virgin Islands, that will in all of my understanding protect it as well as the U.S. Park Service protects it, that it does not set a bad precedent for closing down parks in the United States.

But unless we can reach some type of reasonable agreement and with these kind of things, I think there will be, and may have already started, some troubling discussions about the Federal Government in general owning too much land. So I think—not that I want to close parks, because I don't. I like Assateague National Park in my district. It is a beautiful place, and the Park Service does a fine job.

But what I would like to see us do is to enter into a dialog where, yes, some of these things are a possibility. Williamsburg in Virginia is managed by the State of Virginia, and they do a superb, excellent job. So I would just sort of put my two cents into the discussion.

And sort of, in my judgment, for the purpose of preserving the Park Service, we have to enter into these discussions with sort of a new sense of alternatives to the conventional way that we have been doing things for so long. Thank you very much, Mr. Chairman.

Mr. FALCOMA. The gentleman from Michigan.

Mr. KILDEE. Thank you, Mr. Chairman. I apologize for arriving late. As you well know, I had four different markups or hearings today. So at this time I will not ask any questions orally. I may submit some in writing. Thank you.

Mr. FALCOMA. Thank you. And I certainly would like to thank Mr. Kennedy for being here on the committee. I look forward to continuing working with the members of your office and hope-

fully that we will find a solution to the problems that we face before the committee. I would like to call the witnesses now for our first panel. Mr. Stayman, I guess you have the honor of continuing being there on the hot seat, and Ms. Wilma Lewis, the Interior Inspector General.

Mr. HASTINGS. Mr. Chairman?

Mr. FALEOMAVEGA. Before proceeding, we would like to give the gentleman from Washington his statement.

Mr. HASTINGS. Thank you, Mr. Chairman. We all have obligations, and I have obligations, but I have a particular interest in this next panel that is coming up to testify. And I would like to ask unanimous consent to insert in the record I guess it is an editorial in the Washington Times of October 10 talking about the Commonwealth of the Northern Mariana Islands and the success they have had. And so I would like to have that for the record.

Mr. FALEOMAVEGA. Without objection.

[Editorial may be found at the end of hearing.]

Mr. HASTINGS. And I also would like to submit for the record a statement that I have regarding some of the discussion regarding the minimum wage in that area.

Mr. FALEOMAVEGA. Without objection.

[Prepared statement of Hon. Doc Hastings follows:]

#### STATEMENT OF HON. DOC HASTINGS

Mr. CHAIRMAN. The subcommittee is meeting today to discuss issues relating to the Commonwealth of the Northern Mariana Islands. The Commonwealth is the U.S. territory over 5,000 miles from my state that, for the past 16 years, has enjoyed sustained economic growth. The Commonwealth has weaned itself of most of its federal dependency and is moving in the right direction toward self-sufficiency.

However, the Clinton Administration proposes to federalize the minimum wage in the Commonwealth. In the Department of Interior's report, The Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement, the Administration recommends that the Congress mandate an annual 30-cent increase in the Commonwealth's minimum wage until it reaches federal standards. This federalization of the minimum wage threatens the economic balance in the Commonwealth.

The minimum wage in the Commonwealth is an issue best left to the local government. It is impossible for Washington to micromanage the delicate economic affairs of the Commonwealth. This says nothing of the fact that the United States government expressly exempted the Commonwealth from federalized minimum wage standards under its governing Covenant with the U.S. The Covenant specifically exempted the Commonwealth from the minimum wage because it recognized imposition of U.S. minimum wage laws would cause substantial harm to the Commonwealth. We should honor our commitment to the Covenant.

The Commonwealth has undergone an extraordinary transformation since the signing of the Covenant agreement, but the fact still remains that a federalized minimum wage could crush its fragile economy. It would result in the loss of jobs and businesses in the Commonwealth. It would suddenly halt the Commonwealth's economic growth. It could even result in an increase in the Commonwealth's reliance on federal funds.

To address the minimum wage issue, the Commonwealth has commissioned a comprehensive and independent evaluation of the impact of the minimum wage on the economy of the Commonwealth. This approach allows the Commonwealth to give significant consideration to its local economic needs, and develop sound policies that do not cause substantial harm to the economy.

This Congress has debated increasing the minimum wage in the United States, and it will continue to debate the issue. Earlier this year, I opposed attempts to increase the minimum wage in this country and have serious concerns about efforts to do this in the Commonwealth of the Northern Mariana Islands. The minimum wage issue can be, and is being, dealt with more appropriately by the Commonwealth, and in a way that does not jeopardize its economy. Greater thought and consideration must be given to the economic success story in the Marianas before this Congress votes to mandate a federal minimum wage increase for the Common-



wealth. I thank the Chairman for providing this opportunity to discuss this issue and look forward to hearing this afternoon's testimony.

Mr. HASTINGS. And also some questions to be asked of those that are going to testify today and ask that the questions be forwarded to them so that they can respond in writing.

Mr. FALCOMA. Without objection.

Mr. HASTINGS. Thank you.

Mr. FALCOMA. Ms. Wilma Lewis is with us too?

Ms. LEWIS. Yes, I am.

Mr. FALCOMA. All right. Mr. Stayman, do you want to proceed?

**STATEMENT OF ALLEN P. STAYMAN, DIRECTOR, OFFICE OF INSULAR AFFAIRS; ACCOMPANIED BY WILMA LEWIS, INTERIOR INSPECTOR GENERAL**

Mr. STAYMAN. Thank you, Mr. Chairman. I would quickly like to—

Mr. FALCOMA. Could you stay a little closer to the mike?

Mr. STAYMAN. Certainly.

Mr. FALCOMA. I am hard of hearing.

Mr. STAYMAN. The invitation requested that there be representatives from the Department of Justice, Labor, and INS. So we have Mr. Waxman here from the Department of Justice, Mr. Hurst from INS, and Mr. John Frazer from the Department of Labor.

Mr. FALCOMA. Our good friends for the territories.

Mr. STAYMAN. OK. I already gave part of my statement with respect to the 3634. I would ask that my entire statement be put in the record, Mr. Chairman.

Mr. FALCOMA. Without objection.

Mr. STAYMAN. And I will summarize the section with respect to a second annual report on the CNMI Labor, Immigration, and Law Enforcement Initiative. The Federal-CNMI Initiative was funded with a \$7 million appropriation by the Congress in Public Law 103-332.

The Administration issued its second annual report on the initiative on June 4 of this year. We believe that the 10-page report with executive summary and recommendations brings the reader up to date on programs in the CNMI.

In our report, we note that the combined efforts of the Government of the Commonwealth of the Northern Mariana Islands and Federal agencies are making progress in fulfilling the goals of the initiative. Governor Tenorio has strongly endorsed the CNMI's actions and the increase in Federal law enforcement presence.

The Federal agencies and the CNMI are working cooperatively, with the Office of Insular Affairs acting as an ombudsman, to fashion appropriate responses to the consequences of enormous growth in the CNMI. However, sustained follow-through from both the local and Federal Governments is needed if initiative goals are to be achieved.

I would like to highlight for the committee the recommendations contained in the report. First, that Congress finalize enactment of Section 2 of S. 638 to establish the minimum wage in Federal law including the annual 30-cent increases in the minimum wage contained, till very recently, in CNMI law. And, two, that Congress di-

rect the CNMI to utilize Covenant funds for prison and detention facilities.

On minimum wage, CNMI workers at present lack Federal minimum wage protection, with the result that the Department of Labor is limited to enforcing only the overtime provisions of the Fair Labor Standards Act. S. 638, which passed the U.S. Senate and is before this Subcommittee for action, anticipated possible CNMI backsliding on the minimum wage issue and incorporated CNMI's annual 30-cent increases. Despite this congressional action, however, the CNMI wage policy continues to vacillate.

S. 638 would bring fairness and stability to CNMI wage rates and important new revenue to the local government. The 30-cent increases were enacted by the CNMI Government and continue to be endorsed by the CNMI Chamber of Commerce, the Contractors Association, and the Hotel Association.

The only opposition is from the garment industry, which, despite its claims of hardship, continues to expand. New companies have been granted licenses and production continues to soar. Garment imports from the CNMI increased 30 percent in 1995 and rose over 40 percent in the first two months of 1996 over the same period last year.

Other American Pacific jurisdictions, Hawaii and Guam, have prospered for decades while paying minimum wages either equal to or higher than the Federal minimum wage. The CNMI can similarly prosper. We need not resort to the costly bureaucratic mechanism of a Federal wage board. I will stop right there. You have my full statement. And the panel would be happy to answer any questions you may have.

Mr. FALEOMAVAEGA. Thank you, Mr. Stayman. Ms. Lewis.

#### STATEMENT OF WILMA A. LEWIS

Ms. LEWIS. Mr. Chairman and members of the Subcommittee, I was actually invited to appear here today to testify regarding our audit activities on the CNMI. The Office of Inspector General is an active participant in the CNMI Federal Task Force and, by all indications, a very productive participant as well. Would you like me to proceed with respect to the audit activities at this time, or would you prefer to hear from—

Mr. FALEOMAVAEGA. No. Please, by all means, proceed.

Ms. LEWIS. Thank you very much. I was asked to include in my testimony today a discussion of our audit activities during the course of the past three years; in particular, our recent audit on the management of public land issued in March of this year and testimony regarding the response and constructive actions, or lack thereof, by the Commonwealth to resolve issues raised in our audit reports.

I should also mention, Mr. Chairman, that I was informed that I may be asked questions pertaining to certain ongoing disputes regarding property interests on Water Island in the U.S. Virgin Islands.

I have decided to recuse myself from that matter because prior to my current position as the Inspector General, I served as the Associate Solicitor for the Division of General Law in the Department's Office of the Solicitor. During my tenure as the Associate

Solicitor, staff whom I supervised, in conjunction with the Department of Justice, represented the Department in litigation involving Water Island.

Therefore, in order to protect the integrity of my position and that of the Office of Inspector General, I have decided to delegate all decisionmaking responsibility regarding any Office of Inspector General involvement in Water Island to the second in command in the office, the Chief of Staff and General Counsel, Richard Reback. So I would ask if there are any questions with respect to Water Island, that they be directed to Mr. Reback.

Mr. GILCHREST. Mr. Chairman, could I interrupt just for a second?

Mr. FALEOMAVAEGA. Please, by all means.

Mr. GILCHREST. Where is Mr. Reback?

Ms. LEWIS. Mr. Reback—

Mr. GILCHREST. He is in the building?

Ms. LEWIS. Yes, he is.

Mr. GILCHREST. So we could ask him during the course of this hearing those questions dealing with Water Island?

Ms. LEWIS. Yes. He will be addressing any questions that the Subcommittee may have with respect to Water Island.

Mr. GILCHREST. And if we don't, like I can't stay here much past quarter to four. I could give Mr. Reback the questions, and he could respond to us at a later date?

Ms. LEWIS. Yes. That is correct.

Mr. GILCHREST. Mr. Chairman, I would like at this time to ask unanimous consent to submit—

Mr. FALEOMAVAEGA. Without objection.

Mr. GILCHREST.[Cont.]—for the record the series of questions that we have. Thank you.

[Water Island questions for the Inspector General follow:]

#### QUESTIONS FOR WILMA LEWIS, INSPECTOR GENERAL

The disposal of Water Island has been identified as an oversight priority of the Committee at the beginning of the 104th Congress. I have been sent copies of communications by at least one Water Island lessee to your office regarding the handling of the existing lease arrangements with the sublessees of Water Island and the process of negotiating contracts for the purchase of the lots on Water Island. I have a number of questions.

- What is the amount of annual lease rent that are being collected by the Department from each lessee? Is this amount being collected from all of the sublessees, including those in Sprat Bay [who are at times referred to as sub-sub-lessees]? Did this requirement to collect rent end or change at the expiration of the 40 year lease? Are these funds being properly collected and accounted for?

- What management practices have attributed to the delay in resolving the transfer of title to Water Island properties?

- The Environmental Impact Statement was issued in May 1996. Why wasn't this initiated after the 1992 expiration of the lease?

- The Department's position regarding the possessory interest of the hotel property was not upheld in Federal Court, and the issue is still unresolved. What was the Department's position on the value of the possessory interest to the hotel and what was the ruling of the Court?

- The judgement of the Department has cost the Federal Government millions of dollars and has deprived many citizens of their right to enjoy the use of their property, and has created an incredible level of stress and anxiety as citizens are forced to battle with the Federal Bureaucracy for fair, equitable, and timely settlement of their property rights. The Department is urged to take whatever steps are necessary to expeditiously conclude the disposal of Water Island and transfer title accordingly to those lessees seeking to purchase their property.

- What is the total aggregate loss of revenues identified in your statement about nine audit reports?

#### I.G. QUESTIONS REGARDING THE AUDITS IN THE NMI

- When the audit was issued regarding the mismanagement of public lands in the NMI, approximately \$700 million in lost revenue was cited. Based on the late response by the Governor of the NMI, what do you now estimate the total in lost revenue?
- What other audits have been conducted in the last three years and what costs or loss of revenues have you identified? Have there been timely replies to the audits? What percentage of I.G. recommendations have been implemented?
- There have been reports of misuse of government funds by officials in different segments of the NMI Government. What steps do you recommend to insure the proper and adequate accounting of public funds in the NMI?

Mr. FALEOMAVAEGA. And you will direct it to Mr. Reback?

Mr. GILCHREST. I would like them to be in the record, as well as directing them to Mr. Reback.

Mr. FALEOMAVAEGA. That is fine.

Mr. GILCHREST. Thank you.

Ms. LEWIS. Turning then to our audit activities, during the past three years, we have issued nine audit reports, which have covered a wide array of issues pertaining to the Commonwealth's efforts to develop and effectively implement policies, procedures, and controls related to public land, financial management, and program operations.

While some progress has been made over the years, the results of our audits have clearly shown that the Commonwealth has paid insufficient attention to matters relating to opportunities for, increasing revenues and collections on the one hand, and, reducing expenditures and operating costs on the other. These lost opportunities have cost the Commonwealth millions of dollars in foregone or uncollected revenues and in unnecessary or inappropriate expenditures.

Let me discuss the public land audit that we recently issued since that was one of the audits that was specifically mentioned in my invitation. With respect to that audit, we addressed three areas: land exchanges, lease management, and homestead administration. In each of these areas, we found significant problems.

With respect to land exchanges, the Commonwealth routinely failed to use current appraisals in valuing the land to be exchanged. They failed to exchange land of comparable value; thus, public land was exchanged for private land of lesser value.

The public land was undervalued, and the private land was overvalued. Based on our review, we determined that the Commonwealth lost public land valued at \$118.4 million and would lose additional land valued at \$70.1 million if pending exchanges are completed.

In addition to using outdated appraisals, we found that the Commonwealth lost potential lease revenues in the amount of \$25.1 million on exchanged public land that was leased to a developer by private landowners.

In other words, the Commonwealth did not consider the revenue that could be realized from the commercial development of exchanged public land. The total losses identified in this one area

alone, that is the value of land exchanged or to be exchanged and lost potential lease revenues, were over \$200 million.

In the area of lease management, the actual and potential losses identified totaled approximately \$470 million. About half a million dollars was in lost rental on a couple of the leases that we reviewed, and the potential loss of another approximately \$465.7 million over the unexpired terms of six leases that we reviewed.

This resulted from the Commonwealth's failure to ensure that the minimum lease rental payments were based on the appraised fair market value of the property, and their failure to have gross receipt rental payments, and interest on past-due rentals properly assessed. In addition, lease rental payments were not collected in a timely fashion, and default was not pursued in a timely fashion.

We had, for example, some indications from our audit that public land leased by the Commonwealth for 25 years was leased for a minimum rental payment of approximately \$152,000. Seven days later, the lessee sublet that property for \$720,000 over a 25-year lease. Similarly, there was a 25-year lease by the Commonwealth for approximately \$18.7 million, while the fair market value of the minimum rental payment should have been more in the vicinity of \$262 million.

Finally, in the area of homestead administration, we found that from 1985 through 1994, 208 homestead recipients improperly received a total of \$7 million from the unauthorized sale or lease of their homestead lot. On a site visit, we found indications of commercial development on the lots, apartment buildings, office buildings, restaurants, grocery stores, and so forth.

The Commonwealth did not respond to the draft report that we issued. Following the issuance of the final report, we received a response from the Commonwealth that we found very inadequate, especially in view of the millions of dollars at stake.

When we evaluate a response to an audit report, we look for three things: a plan of action, a projected timeframe within which the action plan would be completed, and the identification of a responsible official. The Commonwealth's response was deficient in all of these respects. Their response was very indefinite and non-committal with respect to actions that would be taken to implement the recommendations. They failed in certain instances to address the root causes of the problems as identified in the recommendations. And they failed to present any strategy for dealing with certain tough resource issues that have a bearing on the implementation of the recommendations. Based on their response, we considered six of the seven recommendations unresolved; that is, there was either a failure to agree with or to adequately address the recommendations.

I can lump the remaining eight audit reports that we did during the past three years into basically three categories: revenue assessment and collection, expenditure control, and general financial management and program operations. We have focused on these areas over the years because of the persistent problems that our audits have revealed.

In the area of revenue assessment and collection, we conducted two tax audits in which we concluded that the Commonwealth lost millions of dollars in tax revenues from the period October 1990

through December 1993. There were deficiencies in the auditing of tax returns and the imposition of tax penalties; in the investigation of potential criminal violations of the tax laws; and in the collection process.

In addition, we concluded that from fiscal years 1991 through 1993, the tax system didn't produce sufficient revenues to fund governmental operations and Federal obligations and was in need of revision. We found a similar problem with the Commonwealth Utilities Corporation, which, due to a rate structure that was insufficient to meet its needs, defaulted on contractual obligations, totaling over \$92.8 million for fiscal years 1988 through 1993.

In the area of expenditure control, we conducted an audit of contracting and contract administration for the Commonwealth Utilities Corporation for fiscal years 1989 through 1993 and found a number of deficiencies—acceptance of unsubstantiated contract claims; purchases of goods and services totaling about \$16.6 million without competition; the expenditure of hundreds of thousands of dollars, for consulting services that were not necessary; and construction projects that were not completed. So there were a number of problems that we found in the area of expenditure control.

Finally, in the area of general financial management and program operations, we conducted three follow-up audits on the Capital Development Funds and the Economic Development Loan Fund to determine whether recommendations made in prior audit reports had been implemented. These recommendations that had been previously made were designed to address problems related to accounting and control of Federal funds provided for capital improvement and economic development, and the effective and efficient operation of the respective programs. We found that of 30 recommendations made to the Commonwealth, 27 were not implemented fully or effectively.

During the past three years, our audits have resulted in 63 recommendations, 54 of which were directed to the Commonwealth, and the remaining nine to the Office of Insular Affairs. The Commonwealth has reported that 36 of the 54 recommendations have been implemented and that nine of the remaining 18 have been resolved. (In other words, there has been concurrence with the recommendations.)

Our experience, however, has demonstrated that it is not always the case that recommendations reported as implemented have, in fact, been implemented fully and effectively. As such, we would be unable to comment on whether or not there has been actual implementation in the absence of follow-up audits.

As indicated in one of our audits that we did during the past three years—the audit on the status of improvements—the Commonwealth has made some improvements in the areas of financial management, expenditure control, revenue collection and program operations over the years. However, improvement on a much broader scale and of a much greater magnitude is necessary.

The Office of Inspector General is committed to continuing its efforts to pursue an audit strategy designed to identify the major and persistent problem areas and to make recommendations intended to address those problems. Our efforts, together with a real commitment from the Commonwealth government in implementing

audit recommendations and the focusing of assistance from the Office of Insular Affairs in identified problem areas, should go a long way toward helping to alleviate the problems.

Finally, we are encouraged by this Subcommittee's interest in our audit activities in the Commonwealth. The Department of the Interior does not have the same level of authority or influence in the insular areas as it does with the Department's offices and bureaus to ensure that audit recommendations are resolved properly and implemented fully and effectively. Accordingly, we believe that periodic oversight hearings of this nature would serve the useful purpose of encouraging resolution and implementation of audit recommendations in the insular areas.

I request that a copy of my full written testimony be placed in the record. Thank you for the opportunity to testify, and I would be happy to respond to any questions that the Subcommittee may have.

[Prepared statement of Ms. Wilma A. Lewis may be found at the end of hearing.]

Mr. FALEOMAVAEGA. Thank you, Ms. Lewis, for a very comprehensive statement. I would like to know if the other gentlemen and members of the panel also would have statements that they would like to present before the Subcommittee. Or maybe at a later point in time that you may want to submit statements for the record, you are certainly welcome to do so.

Mr. WAXMAN. Sir, just speaking from the Justice Department, the Chairman's letter inviting Mr. Stayman to come testify asked that he provide testimony but bring us to answer questions. We are happy to try and answer any questions you have either here or questions you may submit in writing later on. But we don't have any affirmative testimony to offer. We did contribute those portions that are attributed to our respective agencies, both to the 1995 and the 1996 report of the Task Force on CNMI.

Mr. FALEOMAVAEGA. All right. The gentleman from Maryland, questions?

Mr. GILCHREST. Mr. Chairman, I have one quick question to the gentlelady that just spoke. Is there an aggregate number for the losses that you have illustrated in your statement? Do you have the total amount?

Ms. LEWIS. If one were to add up all of the losses that we referenced in our audit report on the public lands, is that correct?

Mr. GILCHREST. Yes.

Ms. LEWIS. It would come to about \$670 million.

Mr. GILCHREST. That is over what period of time?

Ms. LEWIS. If I could, let me just inquire from the Assistant IG for Audits.

Mr. GILCHREST. So something is not done—the figure that you just read to us, what was it—\$600 million?

Ms. LEWIS. In the vicinity of \$670 million has the Assistant IG for Audits indicated, in the context of the discussion of lease management, the leases were generally for 25-year periods of time. So we looked to see what the loss would be over the course of the leases.

It was approximately \$470 million, half a million of which had already been lost, and an additional \$465.7 million which would be

lost over the unexpired term of the leases; so that would be over the course of the 25-year period of time.

Mr. GILCHREST. And at this point, there is a program in place to prevent that from happening?

Ms. LEWIS. Well, I do not believe that there is such a program in place. As I indicated, we got a response from the Governor of the Commonwealth that, in our view, was not adequate to address the types of problems that we have identified.

For example, there was an indication in the response that new regulations had been issued in this area. But one of the main issues with respect to the exchange of land, for example, is the absence of current appraisals.

One of the areas in which it was indicated in the response that they want to maintain flexibility is precisely in that area. There was an indication that there would be no strict requirement as to how current the appraisal has to be. Well, therein lies a large part of the problem because we found, for example, where there might have been 1992 appraisals, 1990 or 1991 appraisals might have been used, which were very different from the more current appraisals. So I can't say that there is a program in place, at least as we have been informed.

Mr. GILCHREST. But you are saying that if nothing is done, we are going to lose about \$600 million?

Ms. LEWIS. That is correct. Now, let me make sure I clarify that. That includes value of land lost as well.

Mr. GILCHREST. Right.

Ms. LEWIS. Yes. That is correct.

Mr. GILCHREST. So are you making a recommendation as to what this Subcommittee should do as far as oversight, or can you give us any recommendations that we could develop legislation to help resolve these problems?

Ms. LEWIS. Well, we received the response from the governor I believe it was at the end of May. And usually what we do when we receive a response that we find unresponsive is we try to give an additional period of time, say, 30 days, to work with the particular audited to see if there can be more progress with respect to those matters.

We have not done that at this point. I would hope that we could get a more responsive answer from the governor, but failing that, then it would really be up to some other entity like this Congress to try to encourage those with the responsibility in the Commonwealth to do something about the problems.

The response that we received insufficient resources to do the type of monitoring that we recommended. And, obviously, we are sympathetic to the fact that resources are scarce.

They are scarce all over, but the problem that we had with the response is that it did not provide for us any indication of a plan—some sort of a strategy that, notwithstanding the insufficient resources, some steps would be taken to try to address the problem. The response was more of the nature that, "Well, we will go as far as we can go with what we have, but we don't expect to go very far." And we found that kind of response to be insufficient.



Mr. GILCHREST. Well, thank you very much. We would like to work with you and the Commonwealth to help find some solution to this. Thank you, Mr. Chairman.

Ms. LEWIS. We would be happy to do that.

Mr. FALEOMAVEGA. You know, as an observation, Ms. Lewis—and I certainly commend you and the members of your staff for doing a very comprehensive work as far as auditing of the Northern Marianas Government and its resources.

And I sincerely hope that with the same gusto and every effort the fact that the Congress has expended over \$20 million in the last four years in trying to get the Secretary of the Interior or the Interior Department to properly audit an account for some \$2 billion in Indian Trust Funds that we have no idea what has happened to these funds that belong to the Native Americans.

And I make this comparative observation in passing—the fact that we do have a responsibility to some 2 million Native Americans in our country and certainly the responsibility of the Secretary of the Interior. As I recall, you know, the Covenant that was passed by the Congress in this relationship with the Commonwealth has only been in existence for 20 years.

And I hope that there is a sense of sensitivity also, and I am not making any excuses for the leaders of the Commonwealth of the Northern Marianas for whatever their inabilities may be in not being able to come up with the goods, so to speak, with the recommendations and some of the suggestions that have been made over the process of conducting these audits.

But I just wanted to put it in perspective that it has only been in the past 20 years that the Northern Mariana Government has been in existence. And as you had said earlier, they have limited resources. There are political turmoils, the ups and downs of getting elected, whether it be for governor or other offices, and so things have not necessarily been consistent in terms of policies and the fact that they have had now about four or five governors within the span of the last 20 years, which means different policies, different people in place in government, and the responsibilities that they bear.

I say this so that it doesn't get to the point where we look at NMI with only 45,000 people in this Commonwealth. I wish that perhaps the IG could do the same thing in the auditing of the Congress. And as you may well have known, an attempt was made, and we can't even keep an accounting of our own records even here in this very institution.

I would like to see the IG also do an auditing of the billions of dollars that are being spent in the State of California perhaps and see what deficiencies there may be. It is so easy for us to pinpoint and saying the needs of 45,000 people, but when you compare that with 33 million people in the State of California, then things get a little fuzzy.

And I commend you for the work that you are doing, and I am sure that our witnesses or friends from the NMI will respond to the concerns that your office has pointed out in your testimony. And I would like to clear this for the record again, Ms. Lewis. You are saying that the aggregate revenue losses of the NMI has been or

will be for the period of a 25 year lease period is in excess of \$670 million?

Ms. LEWIS. That is correct.

Mr. FALEOMAVAEGA. Of lost revenues?

Ms. LEWIS. Yes. I should add that the total would be based on the numbers that I have given you, approximately \$677 million. I mentioned to you that individuals who had homestead leases had improperly used their leases and had, we believe, built commercial and other types of inappropriate things on the property. That was valued at \$7 million. So that is not really a loss that one might consider in the context that you are raising the question, but rather, an improper use.

Maybe the Commonwealth might be able to go after those individuals. That is a question that they have referred to the Attorney General to determine whether or not they would be able to do that. So it is questionable with respect to whether they could get that \$7 million. Excluding that, it would be about \$670 million.

Mr. FALEOMAVAEGA. What basically is the annual budget of the NMI currently?

Ms. LEWIS. I am not aware of the what the annual budget is. It's \$220 million I understand.

Mr. FALEOMAVAEGA. 220?

Ms. LEWIS. Yes.

Mr. FALEOMAVAEGA. Total budget. How much of that is local revenues? 90 percent? I am sorry. Did I—90 percent of the \$220 million budget is locally obtained—local revenues per se. OK. All right. You indicated, Ms. Lewis, that some 30 recommendations as part of the audit report process, and 27 were never implemented or complied with. Can you give us an idea why they were not responded to?

Ms. LEWIS. As I indicated, when we do the audit reports, the auditee can agree with the recommendations, which is considered resolution. Then there is implementation. We get information from the auditee indicating that they have a plan of action to implement and that they have implemented that plan. We take that at face value. We wouldn't know for sure whether or not the implementation has taken place unless we do a follow-up audit and go in and evaluate the actions taken.

With respect to why the 27 out of the 30 recommendations were not fully and effectively implemented, I do not have an answer for that. That is what our audit report found, however.

Mr. FALEOMAVAEGA. Mr. Stayman, you have indicated that one of the basic recommendations that the Interior Department is now submitting is made part now of Senate Bill 638, to establish a minimum wage and Federal law for the CNMI.

You know, three or four years ago, I had recommended to the previous Governor of CNMI—currently probably American Samoa is the only jurisdiction under Federal labor laws that has this industrious committee established every two-year period by the Federal Department of Labor, and in doing so conduct an evaluation with representations from both management, as well as from labor and local leaders, and in the process make recommendations as to the minimum wage for American Samoa, which is below the Federal minimum standards.

And I was just wondering if the Department of Interior had an opportunity to examine that possible option, assuming that the economic situation in NMI is not up to standard with the Federal or U.S. standards? Have you had a chance to examine that option?

Mr. STAYMAN. Yes. Let me step back. This recommendation is not a new one. It was made in our report over a year ago, and based upon that recommendation, the U.S. Senate did move legislation I think nearly a year ago, which has been pending before this Subcommittee.

Let me just say something real quickly, and then I think the representative from the Department of Labor can give a more detailed answer. We believe that the economies of Samoa and CNMI are fundamentally different.

And a more appropriate analogy or comparison would be between Guam and the CNMI. And history shows that Guam can support a minimum wage, and they have a pretty vibrant economy there. In addition, the Chamber of Commerce of the CNMI supports the minimum wage.

Finally, the Government of the CNMI has for the past two years supported this same proposal. It has only been really in the course of the last six months that there has been a falling back from that position. It is unfortunate that we are in this position.

We are confronting a lot of problems in the CNMI, and minimum wage was one of the things that we thought—you know, using the vernacular, it was a no-brainer. Everybody agreed to it. It would have positive effects in the immigration and labor areas where we were trying to come up with policies to mitigate the problems.

But we find ourselves now essentially backtracking to pick up what we think was a relatively simple and positive action that could be taken that would help contribute to the solution of the range of problems there. Having said that, I think the real expert is the Department of Labor so I will defer to them.

Mr. FRAZER. Mr. Faleomavaega, if I could just add a little bit. You started the question by asking if we had evaluated the industry committee process. It is, in fact, only in American Samoa that operates and is among the options that we looked at for this recommendation last year—was that model—that industry committee model.

Allen has indicated many of the reasons why we felt that the recommendation we made was a superior one. Maybe it would help if I could outline briefly some of the reasons that led us away from using or recommending the industry committee model for the Northern Marianas.

First of all, it is, as you know, not a predictable transparent process. It is a process that every two years requires an economic study and the convening of a committee, and it, in that regard, is somewhat susceptible to special interest coming to bear in American Samoa with the tuna canneries and government being the predominant employers. It is a manageable process, but that is quite a different situation in the Northern Marianas.

Another particular problem that we are concerned about is that you can get, as you know, in American Samoa different minimum wage rates for different industry sectors, and that leads to, in some cases—can lead to competitive imbalances in terms of competition

for the labor market. And in an economy like the Northern Marianas that has become so dependent on foreign workers, that could have a really distorting effect in the economies.

And, most importantly, I think from a perspective of interest to us all, the industry committee process is expensive. Our estimate for the—if it were to be applied in the Northern Marianas would be that it would cost about three-quarters of a million dollars to carry that out every two years. That is a huge cost for a process to go through to try to look at industry by industry what a minimum wage change should be.

So we looked very carefully at that as an option and decided it was not the best option given where the Commonwealth was at the time and where there seemed to be support in the Commonwealth for how to implement and Federalize the minimum wage. And that is what underlies our recommendation.

Mr. FALEOMAVAEGA. Mr. Chairman, I know I have taken too much time. I would certainly like to turn the Chair back to you, and the gentlemen from Guam and Michigan have not had a chance to—

Mr. GALLEGLY. [presiding] Thank you very much for taking over while we went over to vote. I assume that our relationship with American Samoa has not changed since I left so, Mr. Kildee.

Mr. KILDEE. Thank you very much, Mr. Chairman. We granted statehood to American Samoa while you were gone. I would like to ask a question to Ms. Lewis. I am looking more for corrective action rather than punitive action. What remedies or procedures should be put in place to assure that revenues are not lost and that proper purchasing procedures are followed in the Northern Marianas?

Ms. LEWIS. One of the main things that we discussed was the issue of current appraisals as I mentioned before. I think that the failure to use current appraisals has created a large problem with the land exchange program. That is one of the areas that we touched on that we didn't think was adequately addressed.

The other thing is that there seems to be some sort of a problem with respect to actual collection and pursuing collections of lease payments—going after defaulted entities with respect to lease payments or timely payments. The collection process seems not to be working as well as it should.

The issue of training personnel comes up and the need to train, although they have indicated in the past that they have started training programs, which I think is a positive step. But that is one area that I think some help would be beneficial.

Mr. KILDEE. Do you think that the—I could probably ask the Acting Attorney General when he gets up here—that the Government of Northern Marianas might welcome some training? I know tax revenue is not the easiest part of our legislation. The tax code is not the most simple part of legislation. Do you think that the Federal Government here at the request of the Government of the Northern Mariana Islands might offer some type of training in collection of revenue?

Ms. LEWIS. I believe that Mr. Stayman indicated that there is a program that his office offers that he might be able to address.

Mr. STAYMAN. In my office, Mr. Congressman, there is a series of programs which we lumped together and called Technical Assistance Programs, and they are funded several million dollars annually. One of those subprograms is called the Management Control Initiative, and it is a pot of money to which heads of government may apply to assist the government in developing their financial management capabilities.

In addition to purchasing and training people on specific computer systems and financial software, we also regularly provide technical assistance from the Federal IRS. It is a program which is available to all States and municipalities, but because of the costs and sometimes the lack of a training funding available in the islands, we underwrite that. And, in fact, just on Friday I did meet with the Director of Finance from the CNMI regarding their interest in these programs.

Mr. KILDEE. I would be interested in pursuing this further by looking at some corrective action because I am sure the Government of the Northern Marianas would prefer to be collecting more of these revenues. It would be very, very helpful so anything that you might in writing furnish the committee later on how we as a committee might proceed to try to find some corrective action for this would be very helpful. Thank you, Mr. Chairman.

Ms. LEWIS. If I could just add for a moment, written policies and procedures was another area that we found lacking and it is possible that with written policies and procedures in place, this situation could improve.

The written policies and procedures would address issues, for example, about the minimum lease rental payments, where we found that in many instances, the value of the property was not appraised at the fair market value. Therefore, you had the situation where minimum lease payments were a lot less than they really should have been.

There is some indication that the way they have leased the property in the past is to take eight percent of the fair market value to compute the lease. But that is not something that is done on a formal basis. It is very informal, I think, as the Governor has also acknowledged.

So if there are some written policies and procedures that are going to be put into place, this would provide guidance in terms of how to compute rental payments, for example. Gross receipts payments—that is another rental payment that is supposed to come in over and above the minimum rental payment. For gross receipts received by the lessee, there is some percentage is supposed to be coming to the Commonwealth. So I think that written policies and procedures would help here as well.

And, if I could mention one other thing, as Congressman Faleomavaega was speaking to the need to be sensitive to the insular areas, in particular, with respect to their ability to comply with various recommendations. We have been trying to work with all of the insular areas because what we have found over the years is that, for the most part, we conduct audits, and then we do follow-up audits a few years later, and find the same basic types of problems arising from year to year.

Our office recently had a meeting with Mr. Stayman in which we were collaborating on what the real problems are and trying to give some indication, based on our audit reports, as to the areas where it might be productive to spend technical assistance funds.

And I think if we continue to do that, that might help to address the problems by focusing the assistance in the areas where the problems systemically have been over the years. So we are trying to work with the insular governments and also working within the Department of the Interior to try to do what we can to address the situation.

Mr. KILDEE. I would encourage you to continue to do that. Thank you.

Mr. FALCOMA. Would the gentleman yield?

Mr. KILDEE. I would be happy to yield.

Mr. FALCOMA. I might respond to Ms. Lewis's statement. I think we all know what the problem is basically and fundamentally. Some of these insular areas just simply do not have the expertise where the lack of educational opportunities for the younger generation, whether Chamorros or Samoans, to become accountants, to become engineers, to become doctors, to become lawyers so the process, while the government continues to function with a lack of this depth of experts, that we don't have the expertise so we have to rely on outside help, whether it be by Labor, whether it be because of consultations or whatever, but this is the problem.

And hopefully in the years to come that there will be more educated people, whether it be in the Virgin Islands or Guam or even in Samoa that the people themselves will then be able to—and in my humble opinion, the bottom line is education. And we just need more local people in the population to become experts in their given fields.

And I suspect that even in American Samoa I can account for only two Samoans who are CPA's. And this is unheard of, I am sure, in many of the communities throughout the United States. So with that lack of depth as far as if you talk about finances, accounting, and all of that, it just simply is not there. And I hope that the sensitivity will be such that you don't blame the people because they are stupid, but just simply because they just don't have the resources.

Ms. LEWIS. Well, one of the additional things that we have been trying to do in the office is, in some instances, to be more proactive, and that is to go in on the front side, on occasion, instead of just on the back side of issues and look at controls that might be in place for a particular program or activity. We could render some advice with respect to how to set it up, as opposed to waiting until it is set up and then going in and saying all of the things that are wrong with it. So to the extent that we can provide some assistance in that regard, we would be willing to do that as well.

Mr. GALLEGLY. I will defer to you in just a second, Bob. You know, in the interest of time, because the meeting is really kind of running—we still have three panels to go—without objection, I am going to ask that we submit my questions to Justice and Labor, and they can respond to me in writing in a timely fashion in the spirit of trying to move this hearing along. And without objection, I will defer to the gentleman from Guam, Mr. Underwood.

[Questions for Department of Labor follow:]

QUESTIONS REGARDING THE MINIMUM WAGE

- What is the cost to administer the Wage Review Board Process in American Samoa?
- How long would it take for the Department of Labor to Implement a Wage Review Process in the NMI?
- What industries or occupations in the NMI would not be covered if the Federal minimum wage extended immediately in full?
- How would various NMI Industries be affected with the full extension of the Federal Minimum Wage, a graduated \$.30 per year increase, or a wage review process?
- How does the cost of doing business in the NMI compare with that in Guam on an industry by industry basis?

[Questions for Department of Justice follow:]

DEPARTMENT OF JUSTICE

- How many personnel are assigned to and what is the cost to maintain and operate the INS office in Guam? What is the level of work load in Guam for tourists, guest workers, permanent residents, and other significant work assignments, and how does that compare to the NMI?
- If the INA were applied to the NMI, but excluded as a port-of-entry and as a place of asylum, and with specific industry categories of guest workers authorized in the INA, what number of personnel would be required and what would be the annual cost to the INS?
- Given the close proximity of Guam to Rota and Saipan, what level savings could be gained through cooperative action by the Guam and NMI INS offices?
- How would the new \$1.5 million computer system being installed in the NMI for immigration help the INS to implement the administration of the INA partially applied and with specific industry categories of guest workers in the NMI?
- If Congress were to authorize the prospective administration of the INA partially-applied to the NMI, and given the manpower requirements, what is a realistic lead time that would be necessary to adequately train personnel, develop regulations for the administration of new specific industry categories of guest workers in the NMI, integration of computer systems, and the establishment of physical offices/work areas in the NMI? [One year? Two year?]
- What problems have Justice or INS employees detailed to the NMI encountered in dealing with the NMI Government Officials regarding immigration and or law enforcement matters?
- What percent of the United States are aliens, obviously excluding aliens who have since become citizens no matter how recent?
- How does that compare to the NMI?
- At what level of aliens (percentage or ratio of aliens to citizens) should the United States be concerned from an immigration management and sovereignty point of view?

Mr. UNDERWOOD. Thank you, Mr. Chairman, and it is good to see you again, Ms. Lewis and Mr. Stayman.

Ms. LEWIS. Thank you. Nice to see you.

Mr. UNDERWOOD. Just for my edification on this issue of the management of public lands, two basic questions. Who lost the money, and who was it lost to? One. Secondly, is there an acknowledgement of the scope of the problem as you have explained it by the CNMI, or are there any factors in this process which could said to be mitigating or influencing the numbers that you have arrived at?

Ms. LEWIS. Who lost the money and who was it lost to? With respect to the land exchange process, one would not be talking about hard dollars, if you will. It is not like the loss of the lease payment, for example, as a result of not having the minimum payment at the level that it should be—at the fair market value.

What you have is a situation where public land is being exchanged for private land, and it is being exchanged for land not of a comparable value. So in the final analysis what you end up with is that the assets of the Commonwealth Government are lessened, and this can ultimately turn into hard dollars. For example, if they lease the less valuable land that they have now exchanged for the more valuable public land, ultimately they could lose lease revenues. Similarly, if they were to sell the land, they would be getting less in terms of dollars for it ultimately than if they had exchanged it for land of comparable value. So it is not hard dollars with respect to the actual exchange, but certainly down the road it can be converted into hard dollars at a later time.

Mr. UNDERWOOD. In a climate of a lack of appraisals, did you do an assessment of the value of the land yourself?

Ms. LEWIS. No. We did not do an assessment of the value of the land. What we did was look to see whether they were using the most currently available appraisals. And what we found on a number of occasions was that they were using appraisals that were dated or else the documentation in the file did not indicate from whence they were getting the numbers they were using. But we did not go in and independently do an appraisal of the land.

Mr. UNDERWOOD. OK. So just on the question of—could you just respond briefly to did the CNMI Government accept—not necessarily accept your recommendations, but did they just generally accept that the problem is as you described it, or are there factors which may explain some of this?

Ms. LEWIS. There was no indication from the response that they rejected the recommendations that we made or the facts that we produced. It was more a question as to whether the Commonwealth's response was as responsive as we had hoped.

Mr. UNDERWOOD. Just briefly, Mr. Stayman, in the general report, there has always been a lot of discussion about the CNMI and the problems that it continues to encounter. And, you know, one scenario posits that if the minimum wage would just be raised, that all the other things would kind of kick into place, and that a number of problems would be resolved.

Another scenario posits that if there was better control of immigration that would be kind of the key point. And a third part talks about the enforcement of labor provisions or kind of making it sound like a law enforcement problem. I guess I am concluding based on your report that basically it is the minimum wage that the report is hanging its hat on. Is that a fair characterization?

Mr. STAYMAN. At this time, yes. You know, we have to go back and all appreciate what a tremendous challenge the CNMI has before it. And I want to take the opportunity to commend the Governor for his commitment. He is facing a daunting task.

Imagine if you can the population of your island tripling in 15 years. The CNMI 15 years ago was, you know, the island equivalent of a sleepy small town in Kansas, and now it is something akin to downtown Manhattan. And they are confronting problems across the board.

The solution is going to require action in a variety of areas, but our general policy is that we believe that the CNMI government is in the best position to analyze their problem and build the capabil-



ity and be able to on an ongoing basis manage that problem. You are never going to fix these problems. There is always going to be crime. There is always going to be abuse and stuff like that.

Minimum wage was one of the things—we knew it wouldn't solve the problem, but we thought it would contribute to or let me put it another way—it would dampen the demand for immigrants. See, right now, they have an economy that basically is two parts. One is the public sector.

U.S. citizens and the locals work at above minimum wage in that sector, and then in the private sector, that which we generally want to support and have grow, they have a much lower wage, and the workers tend to be aliens.

By evening the minimum, giving everyone the same wage, that would create or get rid of the disincentive for locals and U.S. citizens to work in the private sector. And, therefore, there wouldn't be this demand for immigrants. Moreover, there would be a flow of additional revenue into the Treasury that could be used to help finance the tremendous demands on infrastructure.

So, you see, we saw it as a relatively simple thing to do. The government at the time agreed with it. The Chamber of Commerce agreed with it, and we didn't think it would solve the problem, but it would help us with the trends.

Mr. UNDERWOOD. Yes. I understand. Thank you very much.

Mr. GALLEGLY. I guess we have no further questions. I appreciate all of our witnesses this afternoon, and please forgive my absence with the voting schedule and running back and forth. And I have the good fortune of having the gentleman from American Samoa to always stand in for me in my absence, which is a little—it is not really traditional around here to do such a thing, but it has worked very successfully. And we will continue to do so as long as it works as well as it has in the past.

Mr. FALEOMAVAEGA. Mr. Chairman, I would also ask unanimous consent to also allow other members of the committee to submit questions to our famous panel here from Justice and Labor and INS if they have further questions that they may have.

Mr. GALLEGLY. Without objection. That is a good idea.

[Questions may be found at the end of hearing.]

Mr. GALLEGLY. Thank you all very much. The next panel we have is the Acting Attorney General representing Governor Tenorio here, Mr. Aloot, and we have a Representative, Juan Babauta. Mr. Babauta, welcome.

Mr. BABAUTA. Thank you, Mr. Chairman.

#### **STATEMENT OF RESIDENT REPRESENTATIVE JUAN BABAUTA**

Mr. BABAUTA. Thank you, Mr. Chairman, for the opportunity to testify before your committee. Before I begin, I want to thank you for the recent assistance of you and your staff on two important issues concerning the NMI. Your letter to Secretary Babbitt regarding the need for his attention to the new group of former U.S. Trust Territory employees who may be eligible for pensions is much appreciated.

And your joint letter with Chairman Young to the Federal Communications Commission supporting the NMI and Guam's effort to obtain a domestic area code is also appreciated. It was most effective.

tive, and we have been assigned an area code for your information. Thank you for your help.

My position on reform in the NMI is already on record with this committee. I testified here in January of 1995 regarding your proposals in H.R. 602 on minimum wage and immigration. My written testimony reiterates my position which has not changed, Mr. Chairman. My detailed response to the Interior Department's two recommendations in this year's report are also in my written testimony.

In summary, first, I appreciate the need for more prison facilities as Interior recommends. However, I remind the committee that this need is a symptom of the root problem in the NMI, and that is unrestricted immigration.

Second, I support a fair and just minimum wage in the NMI. But rather than the simplistic 30 cent annual increase proposed by Interior, I prefer the Federal Minimum Wage Review Board process that has been successfully in use in American Samoa. This is an area where, obviously, I disagree with Mr. Stayman from Interior. And as you know, Mr. Chairman, this was a proposal that you also supported.

Mr. Chairman, on a separate issue, I am here also to speak about the reform I consider most necessary and I think least controversial, and that is giving the people of the Northern Marianas representation here in this Congress.

When I testified on H.R. 602, I said to myself that two principles should apply for congressional policy in the Northern Marianas. One is that any policy should fulfill the fundamental Federal responsibility to protect civil rights. And, second, that it reduces Federal involvement and promote local responsibility in the islands.

Application of those two principles led me to support your legislative proposals. Applications of those principles also supports representation in the Congress for the Northern Mariana Islands.

There may be no explicit civil right to such representation, but 200 years of practice have established an irrefutable precedent. And if Congress wishes to promote a greater degree of responsibility in the Northern Marianas, how better than to end our political exclusion from the American family. Let us sit on the panels that decide on Federal policy toward the Northern Marianas. Let us be responsible for taking care of our own interests here in this Congress.

Mr. Chairman, our case is simple. We are citizens of the United States. Yet, we lack the most basic right of citizenship, a voice in our nation's government. We have been asking for 20 years. The Marianas Political Status Commission that originally negotiated the Covenant of political union between the Northern Marianas and the United States asked for a delegate.

In 1985, the Commission on Federal Laws, appointed by President Reagan, and including Congressman Robert J. Lagomarsino of this committee, asked that Congress consider legislation giving the Northern Marianas a delegate.

Most recently, the Tenth Commonwealth Legislature, under the leadership of Speaker Diego T. Benavente and Senate President Jesus R. Sablan, petitioned the Congress for a delegate to this

House. Copies of those resolutions have been attached to my written statement which was submitted to this committee.

Our desire is clear, and the only objection to a Northern Marianas delegate ever documented has been our small population in 1975 compared to Guam and the Virgin Islands when they were given delegates. Twenty years later, that objection no longer applies.

If you look at the histories of the Virgin Islands, American Samoa, the State of Washington, the State of Michigan, Montana, and the Dakota Territories, the Northern Marianas has reached a threshold of population set by precedents both historical and contemporary.

Mr. Chairman, in opening your hearing on H.R. 602, you said that "the territories are due the same treatment as other political divisions of the United States," and I couldn't agree more. But the Northern Marianas does not even ask that. All we ask is for the opportunity to be represented in this Congress. Give the people of the Northern Marianas what all other U.S. citizens living within the nation's borders have, and that is a voice here in this body. Thank you, Mr. Chairman.

Lastly, I want to extend my appreciation to your staff, Mr. Manase Mansur, for all the help that he has given us over this last year and in previous years. He has been extremely helpful to my office, to me, and to my staff, and in that sense, to the people of the Northern Marianas. And I really appreciate that. Thank you.

[Prepared statement of Mr. Juan N. Babauta may be found at the end of hearing.]

Mr. GALLEGLY. Thank you very much. Mr. Aloot.

#### **STATEMENT OF THE HONORABLE SEBASTIAN ALOOT, ACTING ON BEHALF OF ATTORNEY GENERAL, NORTHERN MARIANA ISLANDS GOVERNOR FROILAN TENORIO**

Mr. ALOOT. Yes. Mr. Chairman, as you have indicated or has been indicated, I am the Acting Attorney General of the Commonwealth of the Northern Mariana Islands. I appreciate the opportunity to appear before you and the committee concerning the recent Department of Interior report on labor, immigration, and law enforcement, and what I believe was to be the Department of Interior Inspector General's report on management of public lands. Due to the shortness of time, I ask that my prefiled written testimony be submitted for the record.

Mr. GALLEGLY. Without objection.

Mr. ALOOT. I did have a brief summary of my longer testimony. I am going to lay that to the side and deal directly with what I think initially was an issue that perhaps struck a chord it appeared among the committee, and that is the IG audits; in particular, the audit on management of public lands.

Let me just point out that out of all the audits identified by the Interior Inspector General as part of her summary of testimony, all but one deal with activities by the prior Administration of the Commonwealth of the Northern Marianas. Even the audit of the management of public lands, completed in 1996 or at least issued in 1996, my brief recollection is three or four of the 20 some leases

looked at were done by the present Administration. Most, again, were in the past Administration.

Turning to the audit of the management of public lands, yes, problems were encountered; problems that I believe the officials of this Administration and I believe past Administrations knew about, and then the question is what corrective action should be taken.

There is a underlying, I believe, mischaracterization that is part of the Inspector General's land report. It starts out from the assumption or that the question presented is what did the Commonwealth do with the lands the United States gave the Commonwealth?

Point in fact, the United States had no lands to give to the Commonwealth. Those lands historically were and are the property, the culture, the heritage, if you will, of the people of the Marianas Islands. The United States never had title to them. Now, point in fact, the United States merely returned what it had taken under the guise of the Trust Territory Government.

Be that as it may, what I think the other mischaracterization or misleading part about the audit, because I will get to what I believe are solutions that you were probing for, and that is the concept of valuation. I believe that Delegate Underwood raised the precise question that should have been asked and the IG should have continually asked herself or her people, and that was what was lost and who was it lost to?

It appears that they used the—they adopted an approach that one must use two things—the most recent appraisal of property, which I believe if you did a full audit with any sort of historical understanding would not have been the approach you used, because one of the problems of land valuation in the Commonwealth and I believe throughout Micronesia is the very validity of the appraisals themselves. Land appraisals are difficult to do in the best of circumstances. They are much more difficult in Micronesia and in the Commonwealth, assuming people even want to do it correctly.

The second point—and I think it is even more critical when you assess what was lost and to whom it was lost to. I have to tell you that my sense, my valuation of the IG audit, which I believe was done in good faith, is that it is one dimensional. It assumes that the only reason, the only factors one considers in leasing out land, be it private or public, is how much can you get for it and how fast can you get it?

And while perhaps in private leases that is inappropriate, indeed, that might be the only legitimate business approach. I believe that government officials have to look at more factors. For example, there was an article that appeared not too long ago, the Mayor of Detroit, I believe, was getting awards for his foresight in giving away public land—public lots within the city when the person who got this free land agreed to put in a commercial establishment that gave rise to secondary economic benefits—employment, taxes. I believe, and I know the Governor believes this, that those are legitimate factors to consider in determining when and at what level one grants a lease of public land.

The final point on that before I go on to the other points is I hope the Interior Inspector General continues on the audit of leases of

public land to make sure that the Commonwealth gets value for dollar. And one of the leases I think I would recommend that she look at is the United States lease of the American Memorial Park at the Kanapeg Reservation.

Our calculations are that the United States entered into a lease, leased that property, that 177 acres over a 100-year term, for the grand sum of \$1 per month per acre. So, obviously, I would think the Executive Branch would agree that there must be legitimate factors that warrant public land leases that consider benefits other than dollars. At least I would hope so.

With respect to the corrective action, having said I think that there are explanations for perhaps some of the gross characterizations that you see, there have been problems. I will tell you that I now have four lawyers assigned almost—well, three lawyers, one being employed assigned almost full time to issues like this.

Today, while—yes, this is late enough—while we are doing this hearing, my new government contract procurement lawyer is arriving in my office in Saipan. Her job will be to focus on these kinds of issues in the government procurement contract area.

I have committed a lawyer working, in essence, full time to develop, initiate, prosecute, and prevail in land fraud cases. That is where public land was stolen from the public and made private. I think the record will show that our approach to that issue is we are prepared and have or brought cases against the very prominent people. We don't make distinctions. We are an equal opportunity prosecutor in that regard.

We have another attorney who we plan to hire, because we just got approval to do this, to deal with the issues of lease payment recovery. At the present time, I am trying to function in that regard, and I am engaged in back rent collection negotiations.

So I think that to the extent that there are legitimate concerns about how land was leased or acquired in the Commonwealth, the solution is not only the development of regulations to ensure that this does not happen again, and no set of regulations or law will guarantee that it will never happen again, but is also ensured through vigorous enforcement so that every one knows that there is a price.

And I assure you, while I did not come prepared to give you case names and filings, I assure you that at least in the current office of the Attorney General there is and will be a price.

OK. I would like to now get back on track to some of the issues I think are just as important outside the area of land and management of land but also—

Mr. GALLEGLY. Mr. Aloot, I know that you have a lot of things on the table there today, and I know you have come a long way. And we are really getting behind, and I have gone double over the time already. If there is any way that you could kind of summarize, I would sure appreciate it, without denigrating the message that you have to present.

Mr. ALOOT. Sure. Focus on just—let us try three issues very briefly—the report, which I think is the principal driving force behind the hearing. I believe there are two elements I would like to address very briefly that are part of that report that I find either misleading or unacceptable to the Commonwealth and then deal

very quickly with the recommendations because I think they have already been dealt with by other witnesses.

First, we are troubled by the paternalistic observation in the Task Force Report that Native Chamorro and Carolinian culture and influence has somehow been diminished because there are large numbers of, I will stress, nonvoting foreign workers in the Commonwealth.

The indigenous people of the Northern Marianas and their cultures have survived three centuries of Spanish domination and periods of German and Japanese occupation, all preceding the 50 years of affiliation with the United States. Their culture will prevail not due to their isolation, but due to the strength of their people. In fact, many of us believe that immigration and interaction can enrich our culture much as it has done in the United States itself.

The other misleading suggestion in the Task Force Report is that the children of foreign workers are overwhelming the Commonwealth's public school system. The fact is that 80 percent of these overwhelming numbers are children of Micronesians, which the Commonwealth is required to permit entry into our borders by virtue of U.S.-negotiated compacts.

I will report to you that we are now engaged in litigation before the Federal District Courts to clarify our immigration obligations under those compacts. I will also report to you that Guam and the Commonwealth have recently initiated litigation seeking to force the Executive Branch to finally discharge its long-ignored duty to seek annual appropriations to address the negative impacts of such free immigration by Micronesians into the Commonwealth and into Guam.

I can also indicate that the State of Hawaii is prepared to join our litigation. Clearly, the source of the immigration problem in the Commonwealth and responsibility for paying the cost lies on both sides of the Pacific.

Turning to the minimum wage, I believe that the delegate from American Samoa and Representative Babauta and indeed I believe it was the representative of the Labor Department actually all agreed. We support a study.

We support a minimum wage, be it tiered or at some accelerated rate based on fact, not fiction, based on what is the economic reality of the Commonwealth, not the economic policy of and may I add social engineering goals of people in Washington.

It is too expensive for the United States. That is fine. Governor Tenorio has decided that the Commonwealth will pay for that which the United States does not think they can afford, which is for once having a minimum wage debate based on the realities of the Commonwealth, not on the policy goals of Washington. I don't think that is an abnormal message in the current political structure of America.

I also need to emphasize much debate has been made on the minimum wage going up 30 cents, 50 cents, or the minimum wage is not comparable to the Federal minimum wage. I think it is important for everyone to understand that in the Commonwealth minimum wage does not stand alone like it does in the United States.

In the Commonwealth, one is entitled to the minimum wage—let us assume the original minimum wage of \$2.75 an hour—but the Commonwealth requires benefits to be provided to foreign workers that are not provided in the United States.

Our Department of Commerce conservatively estimates that when you add the value of the medical insurance, housing, food, local transportation and the like to our minimum wage, that the Commonwealth, even before the most recent increase, had an effective minimum wage of at least \$4.68 an hour.

The support that the Chamber of Commerce provides or has given for an increase in the minimum wage, I hope that they indicate when they testify that support is predicated upon an equal decrease in the non-salary benefits that are required under Commonwealth law.

So I think if the reality of the Commonwealth's approach to minimum wage and its desire to have for once a local determination of its local economic needs and social needs in light of locally based facts, if the reality is known or understood, the Commonwealth already matches in benefits and salary the Federal minimum wage.

Because I know it has been a long day for a lot of us, I would just like to make sure I haven't missed anything that I think is important for this committee to hear from us. I think I have everything. I will just make one observation, one plea from me.

There is much talk in this halls of government about authority and responsibility. Authority is the power to say yes. Responsibility is the wisdom to say no when one has the power to say yes. This Congress clearly has the authority to say yes to the legislative proposals concerning the Commonwealth that are now before it.

We urge you to show the wisdom to say no to what, in fact, is an unwarranted Federal intrusion into our local decisionmaking process as we continue to implement local solutions to local problems involving local resources. I thank you for the opportunity to give this I guess modified testimony, and I will be happy to answer any questions that you might have.

[Prepared statement of Mr. Sebastian Aloom may be found at the end of hearing.]

Mr. GALLEGLY. I thank you very much, Mr. Aloom. Inasmuch as I relinquished my time so that you would have an opportunity to better present your testimony today—

Mr. ALOOT. I appreciate it.

Mr. GALLEGLY.—I would ask unanimous consent to submit an opening statement that I had for the record.

[Prepared statement of Hon. Elton Gallegly follows:]

#### STATEMENT OF HON. ELTON GALLEGLY

As we commence the Oversight hearing on Northern Mariana Island issues on labor, immigration, law enforcement, and related legislative reforms, let me extend a welcome to those who have traveled from the Marianas. While potential reforms affecting the NMI still generate discussion in Washington and in the NMI, I believe there are reasonable approaches with sound solutions which will benefit the residents of the NMI.

This hearing should provide an opportunity to obtain further information regarding the application of a federal minimum wage, the management of immigration and alien guest workers, law enforcement practices, and other matters in the NMI. The views of the administration and the NMI regarding the progress in these areas since

the last Subcommittee hearing in January 1995, should be particularly relevant to further consideration of NMI legislative reforms.

The hearing agenda also includes the oversight of management problems regarding the disposal of Water Island in the Virgin Islands. The Interior Inspector General, Wilma Lewis has been asked to appear, not only to address IG audits performed in the NMI, but to also provide additional information to the Subcommittee regarding the disposition of the Water Island property.

The Administration will lead off as the first of three panels, and will include the Interior Inspection General, Wilma Lewis, Allen Stayman of the Office of Insular Affairs, and representatives of the Department of Justices and Labor.

The second panel will include John Babauta, Resident Representative of the NMI and the Governor's representative. I understand the Resident Representative may be accompanied by other NMI officials and I ask that he introduce those present.

And, finally, the Subcommittee will hear testimony presented by the President of the NMI Chamber of Commerce, Mr. Sam McPhetres. Other witnesses invited to represent different human rights organizations in the NMI, although not appearing, may submit their statements for the record.

Mr. GALLEGLY. And I just had one question for Representative Babauta. Is the legislature in the NMI prepared to enact necessary local legislation for the election of a delegate if the Congress authorized such action?

Mr. BABAUTA. Mr. Chairman, having served in the legislature, I prefer not to speak on behalf of the legislature. The Speaker is certainly in this room, and I regret I failed to introduce him to the committee. If you would like, he is here.

Mr. GALLEGLY. Speaker Benavente is present?

Mr. BABAUTA. Yes. The Speaker is here in this room. If I may ask for him——

Mr. GALLEGLY. If Speaker Benavente would like to come forward and just be recognized, perhaps he could answer that question for me.

Mr. BENAVENTE. Thank you, Mr. Chairman, and good afternoon to you and the committee. My answer to the question is yes. As a matter of fact, we have discussed this during the process of discussing the resolutions that we have adopted recently in the Tenth Legislature and also in the past three legislatures that I was a member of.

As a matter of fact, our constitution and the Covenant provides for a mechanism or a process for this changeover. And all we would need is actually a law that would allow for this election, and I believe that that will be possible, and we can do it.

Mr. GALLEGLY. Thank you and welcome this afternoon. Mr. Faleomavaega.

Mr. FALEOMAVEGA. I just want to say, Mr. Chairman, I would be more than happy to accommodate whatever your wishes might be to make sure that the proper authorizing language to provide the delegate representation for the Northern Marianas. We have had some precedents, and I am sure there will be no problem in doing this.

And I am very happy that there is a sentiment on behalf of the Chairman and interest, hopefully, that this matter might be provided for the NMI. Just a couple of quick questions. I know we are way over the time. What is the per capita income in the NMI? What is the average wage income in the Northern Marianas? Does anybody have any—submit it for the record if by chance you don't know that. Is it above the minimum wage?



Mr. ALOOT. Yes, it is. We will get the information submitted for the record.

Mr. FALÉOMAVAEGA. Please provide that. I understand, and please correct this for the record, there are currently 7,000 Chinese workers in the garment factories in NMI, and I was just wondering that if there had been any workers' rights' abuses of some of these workers in NMI, and, if so, has our Attorney General's Office been very successful in prosecuting abuses of the workers? You know, those who are working there at NMI, have you had any problems with this issue?

Mr. ALOOT. Well, first, let me say that I think the proper and less inflammatory word is violations of labor laws.

Mr. FALÉOMAVAEGA. If you wish. I would be more than happy to—

Mr. ALOOT. I personally—

Mr. FALÉOMAVAEGA. I am still learning English so please help me.

Mr. ALOOT.—reserve the word abuse for more serious matters. But certainly we have faced and uncovered the same kinds of violations of labor laws, civil rights laws that are found everywhere in the United States. I don't think I need to run down the list of cities that have been in the newspapers from one or more of the 50 States in the last three months. So we have identified them.

Some of the problems I think go beyond our borders because they involve perhaps—some of the predicate acts for some of the violations do not occur within our jurisdiction. We have a very active and I think good relationship with the on-site Federal officials, particularly the U.S. Attorney's Office, to try to share information. We have perhaps the best, closest relationship of any jurisdiction with the Republic of the Philippines on a joint enforcement of our—

Mr. FALÉOMAVAEGA. Mr. General, all I want is just assurance from your office that you are aggressively pursuing or prosecuting those who do abuse labor law violations.

Mr. ALOOT. Well, of course, I would say that—

Mr. FALÉOMAVAEGA. That is all I am trying to pursue here.

Mr. ALOOT. Of course, I would say that I think we are. I would like to do more. I have to tell you that we have increased, for example, just this last month, the number of attorneys in the office 100 percent. I have a simple rule, and that is 100 percent—100 percent of the time. I think everyone who works for me delivers. But to be honest with you, I am never going to be happy with the level of enforcement, but I think the record will show that it is aggressive, and it is across the board.

Mr. FALÉOMAVAEGA. You mentioned also, Mr. Babauta, about the unrestricted immigration policy—whether it is a matter of policy or local law, that also this is a Federal law that allows your fellow Micronesians from FSM can immigrate to Saipan unrestricted. Is this the problem that you are faced with? And what is the estimate of the population? Now, I know you are about 45,000, but right now the Tumaoral population is almost less than 50 percent right now?

Mr. BABAUTA. Yes, much less than that. The population that combines—the figure that combines the Chamorro and the Carolinians is roughly about 22,000. The total population of the NMI, according to the mid-year 1995 census, is about 60,000.

Mr. FALCOMA. I see. And you are having a very difficult problem right now in providing health care similar to the impact costs that our friends in Guam also are having. Is the Federal Government giving any assistance to the NMI with regard to this problem—compact impact?

Mr. BABAUTA. No. We have not, Mr. Chairman.

Mr. FALCOMA. Have you requested assistance in this matter?

Mr. BABAUTA. We have over and over in the past two—three years—five years, and the assistance under the compact impact have not been forthcoming.

Mr. ALOOT. If I may interject, I think I indicated—if I didn't, I apologize—Guam, the Commonwealth, and I think by next week the State of Hawaii will be in litigation with the Executive Branch seeking the very compact impact assistance that this Congress as already authorized and needs only to be appropriated based on a report of that impact.

Mr. FALCOMA. Just one more basic question, Mr. Chairman. I am sorry that we are still running—could I get the assurance from Mr. General that you will respond to the Stated statement of the Inspector General and some of the things that are stated there? You will provide a full response to the allegations stated in the Inspector General's report that was—

Mr. ALOOT. Were there allegations against my office?

Mr. FALCOMA. No, against the NMI.

Mr. ALOOT. Oh, I think that the Governor has responded. I think the Inspector General indicated that she was not satisfied. I certainly will commit to review the Governor's response and to the extent that it was a lack of clarity, or there is new information provided, or ask the appropriate official to provide it. But I can't assure you that the Inspector General will be happy with our response.

Mr. FALCOMA. I thought you had committed four of your attorneys and your staff that you were going to review this more thoroughly, and I thought—

Mr. ALOOT. No, no. The attorneys are not to review that Inspector General's report. It is to go after people that owe us money or owe us land and get it back.

Mr. FALCOMA. Thank you, Mr. Chairman.

Mr. GALLEGLY. The gentleman from Michigan.

Mr. KILDEE. Just very briefly. Mr. Babauta, you are very correct in your observation about the members of the committee who represented places that at one time or still are represented by a non-voting delegate. Michigan was represented by Gabriel Richard, a Catholic priest, who is one of the co-founders of my university, University of Michigan.

And I think probably the only two States that didn't have that outside the original colonies was California—I think you came in directly as a republic to the Union—and Texas, but the rest of us did go through that. So as a history major, I appreciated that statement very, very much.

I fully support you having a representative here in the Congress of the United States. I think that is the least we can do for those who share with us that American citizenship. I think we can do

even more, but I think that is the first step we should take—is to give you representation here. And certainly we will support that.

Just one brief question, Mr. Chairman. You mentioned that when you take into account, Mr. Aloom, the employee benefits—housing, medical care, that the minimum wage is about 4.68—could you give just briefly a description of the nature of the medical care that the people are able to receive there?

Mr. ALOOT. Well, this may come off wrong, but I describe it as the Hillary health plan. It is full, across-the-board, 100 percent.

Mr. KILDEE. OK. Well, that probably pleases—

Mr. ALOOT. Oh, no.

Mr. KILDEE. Pretty broad then, right? Surgery—these matters—

Mr. ALOOT. Yes.

Mr. KILDEE.—are all covered?

Mr. ALOOT. Pregnancy. Correct me if I am wrong anybody, but I believe it is 100 percent across the board.

Mr. KILDEE. Straight comprehensive then?

Mr. ALOOT. Yes.

Mr. KILDEE. So when you look at the dollar minimum wage and add in the benefits, it would come up to what you feel at least—

Mr. ALOOT. The minimum—

Mr. KILDEE. A minimum of 4.68 then.

Mr. ALOOT. 4.68. Certain other industries I have been told—I don't have a figure—I have been told it is higher because of the way that industry—for example, they have a right to deduct for housing, but they don't.

Mr. KILDEE. Someday I would like to come to the Northern Marianas and look at your health care system.

Mr. ALOOT. You are more than welcome.

Mr. KILDEE. Because I think maybe we could learn something from you on that. Thank you. Thank you very much.

Mr. ALOOT. All rightie.

Mr. GALLEGLY. Mr. Underwood.

Mr. UNDERWOOD. Thank you, Mr. Chairman. And I too want to add my words, and, of course, as Mr. Babauta and I have discussed over a number of months, I have introduced legislation to give a delegate to the Northern Marianas—to grant a delegate, although I would add that being a nonvoting delegate is not all that it is cracked up to be, Mr. Babauta. So you might want to keep that under consideration.

Indeed, with representation, responsibility and accountability grows, and I think one of the major difficulties that we are having in the course of dealing with issues with the Northern Marianas and kind of missing each other in the dark sometimes and not really understanding what is going on is precisely the lack of representation on the Hill on a daily basis, an office, a central point from which to understand and explain what the issues are at stake. If we had that, perhaps there would be far less misunderstanding.

Mr. Aloom, your testimony concerns me in a couple of ways. One is that I am never really persuaded by the idea that when the question was raised about the enforcement of labor standards and laws and the word abuses were used and you used violations and

then you made comparisons to other areas, indeed, there is always violations of laws and standards in other areas.

I think the question has to be addressed very seriously, and I would certainly ask for the record that some kind of documentation be given to the Subcommittee in terms of the number of allegations made, the number of charges that emanated from your office as a result of the allegations, and the number of convictions, and to chart that over some time so we can see whether there has been any effective action on this.

There are three—and I ask the question of Mr. Stayman because his report was moving in that direction, and basically the focal point of trying to deal with the issues that have been of some concern over the Northern Marianas have been, one, the one general strategy or the one seen—not remedy but certainly one strategy to attack it is the full application and enforcement of labor laws and standards, and that if somehow or other that was adequately taken care of, that that would basically resolve most of the issues that concern many members of Congress.

Secondly, the alternative viewpoint, although all of these are important, would be dealing with the minimum wage. And I might add that even though the minimum wage is a complex issue, I want to point out that in the case of Guam, H2 workers who are brought to Guam are paid a prevailing wage, which is the wage—not a minimum wage, but a prevailing wage, which, in many instances, is three times as much.

And the obligation to house them, and the obligation to provide medical care, and the obligation to bring them to Guam and take them back home is there as well. And so that merely adding on the cost of what labor recruitment on that is not very persuasive to me I would like to state.

And then the third triad of this is the immigration control. Now, I guess of those three, the responses have always been kind of interesting to me. One is that no one is interested—and certainly least of all I—I am not interested in taking away or denying any prerogatives that the CNMI has legitimately garnered and which are sometimes the envy of people from Guam.

Mr. ALOOT. May I add that I believe Guam is seeking those very—

Mr. UNDERWOOD. Yes. Sure, sure. I am fully aware of what I am seeking, Mr. Aloit. In the case of local control of immigration, the counterargument is local prerogatives, and I respect them. The issue of minimum wage is then—it kind of goes into a very odd argument about, you know, if you add this to that and if you separate out the garment industry and it is a complex issue, and indeed minimum wage is always a complex issue everywhere, but generally I don't get the sense that it is the same argument about local control as the energy is behind immigration.

And then we have the application of labor laws and standards and strict enforcement, and then we get words which say, well, you know, there is the myth and there is the fact. I want to get a sense from what is the Tenorio Administration's position on this?

I mean, where do they see this, or are they in a sense saying that there are no real serious difficulties, and that if there are no serious difficulties, then I wish someone would just say that. "We deny

that there are serious difficulties. We don't know what all this inquiry and all this is going on, and we are shocked that all this is going on."

Is there a problem, and if there is a problem, do you see that these three scenarios, which have been advanced by various people—stricter enforcement, raising the minimum wage, or Federalizing immigration—is a viable strategy?

Mr. ALOOT. All right. I would have to say that only a fool would say that there are no problems, and we are not fools. I also believe that each of the strategies that have been advanced will play a role. There is some question as to what impact each of those strategies will have, and which ones should be perhaps first, second, and third on the list. But they each need to be pursued to be fully effective across the board.

But the critical point here, I think, is the assignment of priorities among those three alternatives. I believe that the Commonwealth has earned, I believe that the Commonwealth has a right to continue to stay the course that Governor Tenorio has laid out, which is admit the problems, honestly assess them, and vigorously implement corrective action.

I don't think that is wrong. I don't think it is asking what any of the jurisdictions that you represent, including Guam, would believe that it is—that would be their right as a member of the American family. At least have a chance to fail. I can almost see some meaningful success on the horizon, and I think that I have a—I personally—to me reform means more than a word. It is an attitude. It is a commitment.

It is a willingness to put it on the line, and I believe that there are many people who are in this process working for the Commonwealth. Many of them no one will ever know who are willing to put it on the line, and they deserve a chance to succeed.

Mr. UNDERWOOD. Thank you. Mr. Babauta, do you have a comment?

Mr. BABAUTA. I don't have any comment.

Mr. UNDERWOOD. Do you have any comments on the general direction of, you know, addressing all the issues that apparently concern the CNMI which are grabbing attention here in Washington?

And the discussion has always circulated around either Federalizing the minimum wage or dealing with the minimum wage in some way, controlling immigration, or perhaps applying stricter enforcement of labor laws and standards. As I understand it, and I could be wrong, Mr. Stayman's report focuses right on the minimum wage as a way to deal with the situation.

Mr. BABAUTA. I think part of the strategy in the Interior's report is to focus on addressing the issue of minimum wage and while it ignores the issue of the open door policy of immigration into the NMI and hoping that some implementation of control on minimum wage would address and solve, at least partially, the problem of immigration. While I partly agree with that, I still think that it has to be—both issues have to address the head-on.

Mr. UNDERWOOD. I appreciate that, and I want to add my words of welcome to Speaker Benavente.

Mr. BABAUTA. Thank you. If I may just add a comment before—if I may, Mr. Chairman?

Mr. GILCHREST. [presiding] Please do. Yes, sir.

Mr. BABAUTA. I want to express another thank you to Delegate Faleomavaega and Delegate Underwood for all of their assistance that they have given me and my office and my staff over the past several years. In fact, ever since I have been here in Washington, Congressman Underwood especially has extended a great help to the NMI on issues of telecommunications and being a sponsor of the delegate bill and the service academies. And, in fact, I have sought his assistance for constituent assistance from the NMI, and I have to tell you I will continue to burden you with this as long as you don't give me a delegate.

Mr. UNDERWOOD. That was why I was your main sponsor.

Mr. BABAUTA. The least I could do for you is that, you know, if someday I move to Guam and live there, I would certainly vote for you. So with that, I just want to thank you.

Mr. UNDERWOOD. Thank you.

Mr. GILCHREST. Thank you very much. Are there any other questions from any of the members? I apologize for—we always have a scattered schedule—for not being here during the course of your input and the questions. It is an issue that we are sensitive to as far as the economics and the human side of wages, and what, after all, is going to be the most benefit to the people who are working for the wages and the people who are paying the wages to stabilize the circumstances. So we will continue to look at this, and I will rely heavily on my colleagues.

Mr. FALEOMAVAEGA. Mr. Chairman?

Mr. GILCHREST. Yes, sir.

Mr. FALEOMAVAEGA. I would be remiss if I did not also express my appreciation in seeing this Honorable Speaker Benavente in the presence of our committee and certainly welcome him and look forward in getting the benefit of his leadership and wisdom and making sure that issues affecting the Northern Marianas on behalf of the legislative side of the Government of the Northern Marianas, that we will certainly look forward in working together with you, Mr. Speaker, and the members of your chamber.

Mr. ALOOT. Excuse me. If I could note, Delegate Underwood did ask for some information on the specific activities of the Commonwealth. I will seek if I can have leave of the committee to send such additional information on our activities, which I will say just include the—we have now begun—taken a first step in implementation of our computerized immigration tracking system, which the United States INS is very enthusiastic about the potentials that system has for the United States immigration system.

The Task Force indicates that there has been a series of arrests and convictions for drugs and the like. What the Task Force Report does not report adequately, I believe, is that those are joint Federal-Commonwealth law enforcement task forces using Commonwealth funds in some cases, but certainly Commonwealth law enforcement officers.

So I think that and some other changes I think will give flesh to the bones of reform that I have mentioned. If I can provide that in the next two weeks, I think that will be enlightening.

Mr. GILCHREST. Thank you very much. We will be looking forward to seeing that information. One of the problems here in

Washington, we are trying to get rid of the flesh and go down to the bones. But you make an excellent analogy.

We do appreciate all of you coming this long distance here to Washington, and we have a sense of appreciation for the problems that you are going through with the political ramifications of the minimum wage depending on which party you are in.

But we will do our best to pragmatically look at the issue. We won't demagogue the issue. We will look at it as pragmatically as possible. Thank you all so much for coming, and have a safe trip home. Panel three is Mr. Sam McPhetres, Chamber of Commerce, and Mr. Bill Campbell, Northern Marianas, Protection & Advocacy Systems, Incorporated. Mr. McPhetres, thank you very much for coming, and I don't have a little background. Where are you from, sir?

Mr. MCPHETRES. I am from Saipan, sir.

Mr. GILCHREST. Pardon?

Mr. MCPHETRES. I am from Saipan.

Mr. GILCHREST. You are from Saipan.

Mr. MCPHETRES. I am President of the Saipan Chamber of Commerce.

Mr. GILCHREST. You sort of look like you are from New Jersey.

Mr. MCPHETRES. It is because I am very unused to this.

Mr. GILCHREST. Oh, I see. Well, thank you very much for coming, sir. We look forward to your testimony.

Mr. MCPHETRES. Thank you, sir.

#### **STATEMENT OF SAMUEL MCPHETRES, PRESIDENT, CHAMBER OF COMMERCE, SAIPAN**

Mr. MCPHETRES. I would in the interest of time dispense, with your permission, with reading my prepared statement and proceed with a brief summary of some of the key issues.

Mr. GILCHREST. Your full statement will be entered into the record.

Mr. MCPHETRES. Thank you. In the beginning, I would like to also state that the Saipan business community is fully behind the push for a delegate to the House of Representatives, and we will support every move we can make on this issue. We think it is extremely important.

To go through the main points here very briefly, I would like to state that the Saipan Chamber of Commerce has been in favor of the continued increase in the minimum wage as stated by Public Law 8-21 of the Northern Marianas.

As the Acting Attorney General stated, we are also concerned that all consideration of this take into account the mandated benefits which we are required to provide to our employees by local law. If they are nonresident workers, they are required to receive room and board, transportation, health care.

I might add with the health care issue, something that has not been brought up, this is health care 24 hours a day, seven days a week. No matter what the issue is, the employer is responsible for whatever happens to their employees while they are in the Island of Saipan or in the Commonwealth.

We feel that the increase in minimum wage will help us to decrease a dependence on alien workers because it will force employ-

ers to be more discriminating on who they hire, looking for higher skilled people, people motivated, and people who will be better trained. And with that in mind, I would move on and respond to any questions you may have on this.

On the issue of immigration, we do consider that there is a major crisis pending. We now have, and I am not sure, the Interior has had one set of figures on the population. A recent census by the Northern Marianas Government has come up with a slightly different set of figures.

Based on the Northern Marianas audit, there are approximately 40,000 nonresident workers in the Commonwealth. We now have 3,000 more hotel rooms under construction and a possible casino or two on the Island of Tinian. Each of these projects will entail the arrival of a large number of nonresident workers if we cannot entice U.S. citizen workers to come. This could lead to a major problem in a variety of areas.

This morning at the Senate hearing, I suggested, and I am quite serious, that somehow we need to be able to sit down and do some serious planning. This has not been done. It is not being done, and to my knowledge, there is no attempt at having this done.

I say this sounds like a little strange thing coming from a Chamber of Commerce, but the stability in the marketplace, stability in the environment is absolutely essential to doing good business. And we have been doing a lot of firefighting in the last few years. We would like to avoid that.

A similar example would be the zoning law, which we may have had some problems with it, but at least it gave people an idea of what to expect. The zoning law was then suspended for three years. We have no zoning at the present time. And several investors have disappeared because of this.

The other element of immigration is related to law enforcement. Much of our crime that is going on in the Commonwealth at this point in time is internal to various ethnic and national groups.

We have found over the past several months that the Tongs or Triads from China have been exercising a protectionist racket in the Commonwealth directed internally to other Chinese businesses. We have a problem with prostitution. This was mentioned in the report. This is also an issue that has been brought up with the Chinese population.

The Chamber is very active in supporting Federal initiatives. We have, in fact, held seminars and workshops with Federal law enforcement personnel, Federal regulators to educate the public in the Commonwealth about what their responsibilities are and to get some dialog going. We think we have been quite successful in this in a lot of areas.

Our seminars have been very popular, and we have had a very, very good response to them. And we wish to assure this committee that we will continue to do so. We offer our full cooperation with all the Federal authorities dealing in the Northern Marianas for whatever purpose, which brings me to the final point I would like to make very briefly, and that is Federal-Commonwealth relations.

Sometimes we have problems that are definitely of our own making. There is no question about that. Sometimes these problems are coming to us from outside. And I would like to point out two spe-



cific examples. I am sorry our Inspector General has already left. I must agree with her findings. I have no problem with those in many respects.

However, I might note that many of the issues that she raised have actually involved local custom. For better or for worse, homesteads have never been perceived and legally required to be long-term homesteads.

With the value of land and the competition for land, there has been a great deal of interest in getting a homestead and then turning around and seeing how much can be made off of it. This is still, I think, the case. There have been bills presented in the legislature to make this illegal, but as the IG stated, this is a fairly common practice. It is not illegal, I might add.

The other thing about the audit is, and the Acting Attorney General stated it quite well, the issue of justifying the audits on the basis that these lands once belonged to the United States.

As a long-term Trust Territory employee, I am quite familiar with the situation under the trusteeship, and I can say flatly the United States never owned a square meter of land in the Trust Territory. And this is a common misunderstanding that leads to points of friction between the Federal Government and the people in the Commonwealth, whatever the motivations of the audit itself.

The second thing I would point out is that the NLRB has recently apparently—this has been reported to me—I have not been able to actually verify it, but my sources are quite believable—that there is a ruling coming down the pipeline that employers will be required to renew their nonresident contract employees at the end of their contracts unless they have cause to dismiss the employee.

In other words, the local control over immigration and our local hire preference laws will be completely overturned by this kind of regulation. We have a regulation in the Marianas which requires every employer to hire local people first whenever they are qualified, whenever they apply for a job before any nonresident workers. And if a nonresident worker's contract expires and a local hire applies for that job, the local hire person is supposed to get preference.

Under this new ruling which is coming down, and I have seen part of it in text, the employer will be required to rehire the nonresident worker, which goes against everything we believe is American. And we think it is not right, and we would ask this committee to look into it. In the interest of time, Mr. Chairman, I will cease my comments at this time and make myself available for any questions you may have. It is kind of lonely up here.

[Prepared statement of Mr. Samuel F. McPhetres may be found at the end of hearing.]

Mr. GILCREST. Well, thank you very much, and we realize you have come a long way to testify so we want to make sure that you get across to us the information that you feel is important. I just have a few questions, and then I will yield to my colleagues.

You are saying—because I am not sure if I understood your earlier statement about whether you were or were not in favor of the minimum wage increase. It seemed that you said you were in favor of the minimum wage increase because that would cause employers to be more selective as to who they were hiring, but they should

take into consideration those of us who are causing the minimum wage to go up. The other benefits that the employees have, which is food, lodging, health care, and so forth, how would that work?

Mr. MCPHETRES. Our position, Mr. Chairman, is that somehow we have to get the Marianas legislature to reduce the mandated benefits as the actual cash wage increases. If we maintain the legally mandated benefits, which can go up as high as \$2 an hour in benefits, in value, and the minimum wage goes up to let us say \$4.25, it is actually a \$6.25 minimum wage to the employer.

Mr. GILCHREST. I see. So that adds a more interesting, yet pragmatic, dimension to the issue of minimum wage. The issue of immigration which you said was a problem for a number of reasons, one of which was the problem of different groups fighting amongst themselves in the Commonwealth, the difficulty of law enforcement, the difficulty of the immigration problem because you can't get—I suppose—I think you made reference to getting—enticing Americans to the Commonwealth as opposed to hiring people from other nations in the South Pacific or a Asia?

Mr. MCPHETRES. That is correct, sir.

Mr. GILCHREST. Do you feel that the American workers would be more suitable, less troublesome? Why would the American workers be better than the—

Mr. MCPHETRES. Well, I think there are two facets to the answer of that question, sir. The first one is we feel that the—the Chamber particularly—feels that we really ought to get more American investment in the Commonwealth. I am not just talking about workers. I am talking about the overall investment pattern. We have very little investment by citizens of the United States.

The minimum wage in this private sector discourages us from hiring U.S. citizens in many cases because, for example, I can hire a 10 year experienced CPA from the Philippines for \$3 an hour. If I add \$2 an hour to that, it is \$5 an hour in terms of benefits. I can hire three of those for \$15 an hour. I have to pay \$15 an hour for one U.S. citizen.

Mr. GILCHREST. Most of the people that come in to work in the Commonwealth as immigrants, generally speaking, what would they be doing? Is it labor intensive?

Mr. MCPHETRES. No. It is everything, sir.

Mr. GILCHREST. So there is a whole variety of things.

Mr. MCPHETRES. Well, I will go back to the census. I would defer to whichever census is correct. I will act on the Northern Marianas census. We have approximately 40,000 jobs that are occupied by nonresident workers.

Mr. GILCHREST. Are these annual jobs or are these permanent jobs?

Mr. MCPHETRES. These are permanent jobs.

Mr. GILCHREST. 40,000 that pretty much go unfilled or they are filled by—

Mr. MCPHETRES. They are filled by nonresident workers.

Mr. GILCHREST. They are filled by nonresident workers who are by their very nature transitional?

Mr. MCPHETRES. Exactly.

Mr. GILCHREST. Just one other. You bring up a lot of issues here. Well, you just answered that one question—40,000 workers. I have

some other questions. If we have time, I will come back. If I don't, I will fly out to Saipan, and we can talk about it over a cup of tea.

Mr. MCPHETRES. We would love to have you there, sir.

Mr. GILCHREST. Where are you from? Are you from the States?

Mr. MCPHETRES. Once a long time ago I was in Alaska.

Mr. GILCHREST. Alaska.

Mr. MCPHETRES. I used to work here when Senator Bob Bartlett was the first Senator from Alaska.

Mr. GILCHREST. Are you enjoying your stay in the South Pacific?

Mr. MCPHETRES. When I left high school, I said I would never get cold again.

Mr. GILCHREST. You would never be cold again. So it doesn't snow there?

Mr. MCPHETRES. No, no, not very often.

Mr. GILCHREST. Thank you very much. I will yield to the gentleman from American Samoa.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. Mr. McPhetres, I am just curious. I am getting different numbers in terms of what is the real population of NMI? Is it 45,000 or is it 60,000?

Mr. MCPHETRES. If you are talking about warm bodies, the CNMI census, which was just released last month, is 59,000 plus.

Mr. FALEOMAVAEGA. So it is 60,000?

Mr. MCPHETRES. Yes. I noticed that Mr. Stayman quoted a different figure. I am not sure, you know, what the balance—what the adjustments are. But the census was carried out last year in the Northern Marianas—house-to-house census so I am relying on that.

Mr. FALEOMAVAEGA. And in your statement, 40,000 of those are expatriots?

Mr. MCPHETRES. That is correct.

Mr. FALEOMAVAEGA. Which leaves the Chamorro population of 20,000?

Mr. MCPHETRES. Actually, if you look at the figures, the census is kind of strange. They were supposed to be following the U.S. census. However, there are some classifications there which don't fit very well. You go down from the top, Chamorro, Carolinian, and white, Trukese, Ponape, and Oriental, and so you really can't get into that. There is a citizenship classification, and it comes down to approximately 20,000 U.S. citizens of which 2,000 are from the mainland, 18,000 are Carolinian and Chamorro.

Mr. FALEOMAVAEGA. I assume that the Census Bureau did conduct a 1990 census on NMI?

Mr. MCPHETRES. That is correct. The population at that time was 40,000.

Mr. FALEOMAVAEGA. More blessings to you because for the first time in 90 years in our relationship with the United States, the Census Bureau finally took an official census in the 1990 census. That is after 90 years of association with the U.S.

I have a question concerning the minimum wage again. I asked earlier, and I think this is something that I am trying to resolve in my own mind, about the application or nonapplication of minimum wages in NMI. And I suppose basically the bottom line—a question that I have is that is the cost of living in NMI about the same as here in the U.S.?

Mr. MCPHETRES. It is much, much more expensive.

Mr. FALEOMAVAEGA. More expensive?

Mr. MCPHETRES. Yes, sir. When I go to the supermarket here, I have a hard time. My blood pressure rises rather quickly.

Mr. FALEOMAVAEGA. A loaf of bread in NMI would cost how much?

Mr. MCPHETRES. \$2.

Mr. FALEOMAVAEGA. \$2.

Mr. MCPHETRES. A melon, a cantaloupe is anywhere from 3 to \$5.

Mr. FALEOMAVAEGA. And what is the per capita income right now of the NMI?

Mr. MCPHETRES. I would have a hard time answering that question, sir, because I don't know whether you mean total population, which includes the 40,000 workers, most of whom are on minimum wage, or the U.S. permanent citizen workers, most of whom earn well above minimum wage.

Mr. FALEOMAVAEGA. Well, this is a real essential question that I have, and I certainly would love to ask Mr. Sanderson—our friends from the Interior Department if they could provide that for the record—what is the per capita income of NMI? Because it ties into my problems with the minimum wage, Mr. McPhetres.

Mr. MCPHETRES. I understand.

Mr. FALEOMAVAEGA. And when we make comparisons, currently, the U.S. poverty level is now at about what—14,000 per annum, and the poverty level income in the United States—I am just trying to get a mechanism here to make a sense of measurement as to what we are talking about. The feeling basically as I read your statement is that you are for the minimum wage as is currently the law by local adoption. Right?

Mr. MCPHETRES. You get into a sensitive area here at the moment, sir. The once Acting Governor last week or two weeks ago vetoed the one law which would have raised everything for one time at 30 cents for everybody except construction and the garment industry, which would have left 8-21 in place, which would mean the annual increment for everyone across the board 30 cents. That is the one we are in favor of.

Mr. FALEOMAVAEGA. Do you agree with the gentleman from the Department of Labor saying that it is too costly to apply the current system that is now being used in American Samoa under the auspices of the—

Mr. MCPHETRES. I agree. Yes.

Mr. FALEOMAVAEGA.—U.S. Department of Labor?

Mr. MCPHETRES. Yes.

Mr. FALEOMAVAEGA. You don't think that an industrial committee every two years could be organized in such a way that will give a better measurement of the economic situation of NMI?

Mr. MCPHETRES. As he said, it would cost three-quarters of a million dollars every two years. I am not sure it is worth that. I commend the Governor for hiring the Hay Group to study the minimum wage issue and include—and this is extremely important to a consideration—that you include the government salary rates, as well as the private salary rates because there are two different worlds.

One of the things that has handicapped the private sector from its development is that we are unable to compete with the government on the benefits package that they offer to their employees. And until we can consider that as a factor, we cannot attract competent local workers from the government to take equivalent jobs in the private sector.

Mr. FALCOMA. Isn't one of the problems also how the private sector is competing with the government on these extended leases, assuming that these lands do not belong—I assume that—these tracts of lands that are given to developers and resort people, are they government-owned land or privately owned?

Mr. MCPHETRES. Both. Right now, if I could just complete the thought here, sir, this is one of our problems. I talk about stability in government. A few years ago our big issue is what we call the Article 12 cases, when land had been leased from—private land had been leased to developers, found that they were being threatened in Court by having their leases nullified because of various technicalities. This had been resolved, but in the process, a lot of potential investors said, "I am not going to touch this place."

The other thing that we had a few years ago was a tax law. The tax law was passed at midnight, which would have raised excise taxes 300 percent on the various goods, particularly aimed at the tourist industry. We had people closing down major luxury gift shops because they couldn't afford that. People were running away.

We are looking for stability. We are looking for something which all comes down to one of my fetishes as a college instructor, the P word. If we can't get some "planning," we are going to keep going like this.

Mr. FALCOMA. Do you agree with the Inspector General's assessment, the total losses in revenue potential by these lease agreements in excess of \$777 million that the NMI stands not to—

Mr. MCPHETRES. I have a hard time accepting that, not that I think that it is wrong. I am just not exactly sure what the grounds are. For example, the Governor is in the process of leasing public land for a private school. This private school is for the benefit of the Northern Marianas. They will be paying taxes. They will be hiring people. They will be contributing to the economy.

Should they be paying a lease price, the same as someone who is coming in there and building—I will take a wild stab here—a mall which is filled with profitmaking stores and eventually will return back to the Northern Marianas in 25 years?

Mr. FALCOMA. What is your understanding of the recent visit of some of the staff people from the prominent leaders of the House when they visited NMI, and under whose auspices, and what did they hope to accomplish in their visit there with the leaders of NMI? Did they meet with the Chamber of Commerce?

Mr. MCPHETRES. Yes, they did, sir. We had a rather productive meeting with them. The rest of your question I am really not in a position to answer. The group I believe was sponsored by the Government of the CNMI. They made the schedule. We were able to meet with them, and we tried to give them the broadest possible view of the differing points of view which exists within the Cham-

ber because we are not completely unified in everything. The Garment Association, for example, is a member of the Chamber.

Mr. FALDOMAVAEGA. So the Government of CNMI paid for the—

Mr. MCPHETRES. I can't answer that, sir. I have no idea. All I am saying is they sponsored the group. They led them—this schedule and were in charge of them while they were there.

Mr. FALDOMAVAEGA. I would like to ask our friends again from the Office of Insular Affairs to pursue this and perhaps hopefully provide this for the record if possible.

Mr. MCPHETRES. You may want to ask the Acting Attorney General if he is still here.

Mr. FALDOMAVAEGA. If he is still here, I will pursue that to be made part of the record as I am very curious about it. You do agree that the total budget for NMI at this point is \$220 million?

Mr. MCPHETRES. That is the budget that has been submitted. Yes, sir.

Mr. FALDOMAVAEGA. And that 90 percent is all local revenue?

Mr. MCPHETRES. I have a problem with that. I am aware that I think Federal categorical grants coming in are close to 75 to \$100 million a year. Now, whether you include that in the budget figure, I am not a bookkeeper. I don't do that sort of thing.

Mr. FALDOMAVAEGA. So it is more than \$220 million?

Mr. MCPHETRES. Actual expenditures I believe would come up to—

Mr. FALDOMAVAEGA. Maybe my question wasn't stated properly, but it is more than \$220 million?

Mr. MCPHETRES. I would take a wild guess at that, sir.

Mr. FALDOMAVAEGA. Thank you very much, Mr. McPhetres. Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Faleomavaega. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. Mr. McPhetres, you seem to have a very comprehensive health care program in the Northern Marianas. From where do you attract your physicians?

Mr. MCPHETRES. Well, there are two separate questions there. There is mandated—employers are responsible for the health care of their nonresident employees. They are then—the employees who go to the hospital are then—the expenses are paid for by their employers. There is not a comprehensive health insurance program for, you know, universal health insurance.

We have one hospital. We have about three or four private physicians in private practice with their own clinics. We have the FHP, which has its own clinic for Saipan. I am talking Saipan now. There are smaller clinics on the Islands of Rota and Tinian.

Mr. KILDEE. So rather than insurance, you actually directly provide—

Mr. MCPHETRES. In some cases, the employers provide or actually have insurance, but it is not legally required. The only thing that is required is that the bills be paid by the employer.

Mr. KILDEE. OK. An employee who required surgery could have the surgery done locally?

Mr. MCPHETRES. Yes, sir.

Mr. KILDEE. OK. And the employer is responsible there for the health care then of the employee?

Mr. MCPHETRES. One of our major problems, sir, is the seven-day-a-week, 24-hour-a-day provision. If it were just employment-related accidents or something, I don't think anybody would have any problem. But if there is a traffic accident on a weekend, too many beers, something like that resulting in an injury off-duty time, the employer is still responsible.

If the employee abandons his job, the employer is still responsible until that individual leaves the island, which reminds me, if I might interject one other thing, while the talk was about the labor abuse, and there is generally a widespread feeling that this is a common issue in the Northern Marianas, I would like to point out that in spite of this, we have a major problem with overstayers; that is, people whose contracts had expired.

They do not wish to return home, who remain behind, and who are a kind of black market economy, which creates a problem for a lot of people. And we are hoping that the LIIDS program—the computerized program, which is now being put in place, will help us to resolve that problem. But I point that out to note that as bad as things may or may not be perceived to be in the Marianas, it is still a very popular place for the nonresident workers.

Mr. KILDEE. Thank you very much. Thank you for your testimony. Thank you, Mr. Chairman.

Mr. GILCHREST. Thank you, Mr. Kildee. Mr. McPhetres, what is the major industry of the Northern Marianas?

Mr. MCPHETRES. We have two major industries, sir. One is tourism and one is garment industry.

Mr. GILCHREST. Which one has more employees?

Mr. MCPHETRES. The garment industry I believe. That has 7,000 employees.

Mr. GILCHREST. 7,000?

Mr. MCPHETRES. Right. I think there is about five in the tourism-related industry.

Mr. GILCHREST. You have somewhere in the neighborhood of 12,000 people working in those two industries, I would assume predominantly immigrant employees?

Mr. MCPHETRES. Well, if I say that many employees, I am talking about immigrant employees, with the exception of one factor I should note, that the law in the Marianas requires that any company that has more than 100 employees must have 20 percent local hire. Unfortunately, there are not enough local bodies. The local workforce consists of about 8,000 people, 5,000 of whom work for the government. So that leaves 3,000 people left to fill those 40,000 jobs I mentioned earlier.

Mr. GILCHREST. How many residents are there?

Mr. MCPHETRES. Permanent residents?

Mr. GILCHREST. Permanent residents.

Mr. MCPHETRES. About 20,000.

Mr. GILCHREST. About 20,000.

Mr. MCPHETRES. 20—25,000.

Mr. GILCHREST. You have about 5,000 working for the government?

Mr. MCPHETRES. That is correct.

Mr. GILCHREST. And about 3,000 working in other various capacities?

Mr. MCPHETRES. That is correct.

Mr. GILCHREST. And you mentioned earlier there is going to be how many hotels built?

Mr. MCPHETRES. Present plan there are—we have 3,000 hotel rooms in place now. I am using round figures. 3,000 in place now. There is another 3,000 under construction or already being approved for construction. In addition to those hotels, there is a casino being planned—at least one casino. Two are on the boards.

Mr. GILCHREST. You mentioned that the casinos may create problems?

Mr. MCPHETRES. Well, yes, sir. The casinos are relegated to the Island of Tinian, which at the present time has very little infrastructure. There is a plan now to build a \$500 million hotel.

Mr. GILCHREST. Who is going to do that?

Mr. MCPHETRES. A Chinese company.

Mr. GILCHREST. A Chinese—mainland Chinese? Taiwan?

Mr. MCPHETRES. From Hong Kong. I understand it is a Hong Kong company with mainland ties.

Mr. GILCHREST. And they want to do that because they think there is going to be a huge tourist industry there?

Mr. MCPHETRES. They believe that there is going to be a lot of money involved. Yes, sir.

Mr. GILCHREST. Now, that Hong Kong firm, what happens in three or four years from now? Will that firm fall under the new Chinese government? Will they retain their interest?

Mr. MCPHETRES. I cannot speak to that. I have no idea.

Mr. GILCHREST. And the Commonwealth is welcoming this economic boom, or do they have some reservations?

Mr. MCPHETRES. The feeling in the Island of Tinian—just a little background. 1989, Tinian is the only island that voted to accept commercial gambling—casino style commercial gambling.

Mr. GILCHREST. That is the only island that can accept—

Mr. MCPHETRES. Yes.

Mr. GILCHREST.—legally this type of activity?

Mr. MCPHETRES. Casino-type gambling. Yes.

Mr. GILCHREST. This was the zoning that you were talking about?

Mr. MCPHETRES. No. This a local initiative.

Mr. GILCHREST. A local initiative by Tinian that they want this?

Mr. MCPHETRES. By the people of Tinian.

Mr. GILCHREST. They want this casino and this hotel?

Mr. MCPHETRES. Yes, sir. They have a law that allows up to five of them.

Mr. GILCHREST. Pardon?

Mr. MCPHETRES. They have a law that allows up to five casinos.

Mr. GILCHREST. Now, this, I suppose, is a local issue. They are happy about it?

Mr. MCPHETRES. They are ecstatic about it. Yes, sir.

Mr. GILCHREST. They are ecstatic. Woo. Well, I am glad they are happy with it. And you see this as a problem because sometime in the future the culture and the whole environment of Tinian is going to change?

Mr. MCPHETRES. Well, at one point, one of my occupations as a consultant, I was hired to do a socioeconomic impact study of ca-



sino gambling on Tinian. And we don't have enough time to go into that in great detail but——

Mr. GILCHREST. Well, this study would include, as you said earlier, or you made some mention to the fact that they didn't have the infrastructure?

Mr. MCPHETRES. That is right.

Mr. GILCHREST. Which means roads, electricity, sewage treatment plant?

Mr. MCPHETRES. Roads, power, water, sewage——

Mr. GILCHREST. The whole ball of——

Mr. MCPHETRES.—solid waste.

Mr. GILCHREST. Is there any measure to ensure that that is in place prior to——

Mr. MCPHETRES. Well, as is normal there and, I mean, in the Commonwealth, investors are required to put in their own infrastructure. So part of the cost of this 500 million hotel will be to put in their own water treatment plant, their own generating plant, their own whatever else is required.

Mr. GILCHREST. How big is Tinian?

Mr. MCPHETRES. Are you familiar with Manhattan Island?

Mr. GILCHREST. Manhattan?

Mr. MCPHETRES. About half the size of Manhattan.

Mr. GILCHREST. Half the size of Manhattan. How many people live on it now?

Mr. MCPHETRES. 2,000.

Mr. GILCHREST. 2,000. What does the island look like? Is it mountainous? Is it flat?

Mr. MCPHETRES. It is flat.

Mr. GILCHREST. Broad, sandy beaches?

Mr. MCPHETRES. Its claim to fame was to be the launching place of the Enola Gay in 1945. It had the largest American airbase in the world at the time.

Mr. GILCHREST. It is half the size of Manhattan. Is it subject to——

Mr. MCPHETRES. I am just estimating now.

Mr. GILCHREST.—typhoons?

Mr. MCPHETRES. Oh, yes.

Mr. GILCHREST. Well, that is half a world away—actually more than that probably. All right. Well, this is all very fascinating to a young man from Alaska I am sure, and I thank you so much for your testimony. And we are grappling with this issue of—we talked earlier today in the full committee about whether or not Puerto Rico should be a Commonwealth, a sovereign State, or a sovereign country. And I am not sure if that will ever happen to this particular Commonwealth.

But we as the—I hate to say—I dare not say the colonial powers of these communities out there in the far-flung Pacific, but I would hope that we would stay engaged with these rather beautiful small communities to ensure that the kinds of health and safety and the quality of life issues and freedoms that we hold dear here on the mainland are certainly extended to the lives of the people that live out there.

Mr. MCPHETRES. We appreciate that very much, and we will hope that you can help us attract more Americans to come out.

Mr. GILCHREST. And I think maybe there ought to be a program because I would venture a guess—I think I would be safe by betting a million dollars that 85 percent of the American citizens have no idea what the Northern Marianas are. They might think it is a community in Brooklyn, and that we actually have territories.

Mr. MCPHETRES. I deal with that every day in my job, sir.

Mr. GILCHREST. I think if there could be a program to reach more Americans, whether it is through the colleges or advertisements on TV, you might have a number of young students go out there out of curiosity, and you might even have a number of spouses finding some place to escape to depending on what their conditions are.

Mr. MCPHETRES. One thing if I may add, that the public school system is now attracting mainland U.S. teachers. We now, I believe, have close to 200 on the island. Historically, they would stay for one year, but I think there will be five to ten percent of each group that will stay on after that and build up a population, the idea being not to Americanize the islands, but to try to get more local—more U.S. citizen participation in the activities there.

Mr. GILCHREST. I was going to say maybe if there is a place for a retired member of Congress, but I would have to talk to Mr. Meades about that to see if it is OK.

Mr. MCPHETRES. I think we could arrange something.

Mr. GILCHREST. Thank you very much, sir, and have a safe trip back. The hearing is adjourned.

[Whereupon, at 5:50 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

104TH CONGRESS  
2D SESSION

# H. R. 3634

To amend provisions of the Revised Organic Act of the Virgin Islands which relate to the temporary absence of executive officials and the priority payment of certain bonds and other obligations.

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1996

Mr. FRAZER (for himself, Mr. BALDACCI, Mr. BISHOP, Mr. THOMPSON, Ms. NORTON, Mr. MORAN, Mr. WYNN, Mr. HASTINGS of Florida, Mrs. MEEK of Florida, Mr. LUTHER, Mr. ROMERO-BARCELÓ, Mr. HILLIARD, Ms. MCKINNEY, Mrs. CLAYTON, Mr. RANGEL, Mr. DORNAN, Ms. JACKSON-LEE, Mr. LEWIS of Georgia, Mr. FLAKE, Mr. HAYWORTH, and Mr. MENENDEZ) introduced the following bill; which was referred to the Committee on Resources

---

## A BILL

To amend provisions of the Revised Organic Act of the Virgin Islands which relate to the temporary absence of executive officials and the priority payment of certain bonds and other obligations.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Virgin Islands Organic  
5 Revision Act of 1996”.

1 **SEC. 2. TEMPORARY ABSENCE OF OFFICIALS CLARIFIED.**

2 Section 14 of the Revised Organic Act of the Virgin  
3 Islands (48 U.S.C. 1595) is amended by adding at the  
4 end the following new subsection:

5 “(g) An absence from the Virgin Islands of the Gov-  
6 ernor or the Lieutenant Governor, while on official busi-  
7 ness shall not be a ‘temporary absence’ for purposes of  
8 this section.”.

9 **SEC. 3. AMENDMENTS TO PRIORITY OF BONDS AND OTHER**  
10 **OBLIGATIONS.**

11 (a) **AUTHORITY TO ISSUE OBLIGATIONS.**—Section 3  
12 of the Act entitled “An Act to authorize the government  
13 of the Virgin Islands to issue bonds in anticipation of reve-  
14 nue receipts and to authorize the guarantee of such bonds  
15 by the United States under specified conditions, and for  
16 other purposes”, approved August 19, 1976 (48 U.S.C.  
17 1574c), is amended—

18 (1) by striking “priority for payment” and in-  
19 serting in lieu thereof “a parity lien with every other  
20 issue of bonds or other obligations issued for pay-  
21 ment”; and

22 (2) by striking “in the order of the date of  
23 issue”.

1       (b) APPLICATION.—The amendments made by this  
2 section shall apply to obligations issued on or after the  
3 date of the enactment of this Act.



104TH CONGRESS  
2D SESSION

# H. R. 3635

To direct the Secretary of the Interior to enter into an agreement with the Governor of the Virgin Islands, upon request, that provides for the transfer of the authority to manage Christiansted National Historic site.

---

## IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1996

Mr. FRAZER (for himself, Mr. BALDACCI, Mr. BISHOP, Mr. THOMPSON, Ms. NORTON, Mr. MORAN, Mr. WYNN, Mr. HASTINGS of Florida, Mrs. MEEK of Florida, Mr. LUTHER, Mr. ROMERO-BARCELÓ, Mr. HILLIARD, Ms. MCKINNEY, Mrs. CLAYTON, Mr. RANGEL, Mr. DORNAN, Ms. JACKSON-LEE, Mr. LEWIS of Georgia, Mr. FLAKE, Mr. HAYWORTH, and Mr. MENENDEZ) introduced the following bill; which was referred to the Committee on Resources

---

## A BILL

To direct the Secretary of the Interior to enter into an agreement with the Governor of the Virgin Islands, upon request, that provides for the transfer of the authority to manage Christiansted National Historic site.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 SECTION 1. TRANSFER OF AUTHORITY TO MANAGE AND  
2 CONTROL CHRISTIANSTED NATIONAL HIS-  
3 TORIC SITE.

4 (a) IN GENERAL.—Upon the request of the Governor  
5 of the Virgin Islands, the Secretary of the Interior shall  
6 enter into an agreement with the Governor which transfers  
7 to the Governor the authority to manage Christiansted  
8 National Historic site, located in Christiansted, Virgin Is-  
9 lands.

10 (b) CONTENTS OF AGREEMENT.—The agreement  
11 under subsection (a) shall include provisions which—

12 (1) transfer the authority to manage Christian-  
13 sted National Historic site upon a determination by  
14 the Secretary of the Interior that the Government of  
15 the Virgin Islands has the financial ability and com-  
16 mitment to maintain and operate the site without fi-  
17 nancial assistance from the Federal Government;

18 (2) retain for the United States fee title to all  
19 property comprising Christiansted National Historic  
20 site;

21 (3) require the Government of the Virgin Is-  
22 lands to continue to use Christiansted National His-  
23 toric site for the purposes for which it is used on the  
24 date of the enactment of this Act, in accordance  
25 with standards and plans approved by the Secretary  
26 that shall be specified in the agreement; and

1           (4) authorize the Secretary to terminate the  
2       agreement and revoke authority transferred by the  
3       agreement, if the Secretary finds that the Govern-  
4       ment of the Virgin Islands is not complying with re-  
5       quirements under paragraph (3) or is otherwise not  
6       in compliance with the agreement.

○



## STATEMENT OF GOVERNOR ROY L. SCHNEIDER

HR 3634 &amp; HR 3635

Mr. Chairman and distinguish members of the Committee.

I am here today to address two bill that affect the Virgin Islands. But before I take up the business at hand, let me take this opportunity to personally thank you, Mr. Chairman, for all the help you provided immediately after the storm. We needed you and you were there. Our recovery would not be possible were it not for your involvement and attention and understanding. Your ability to deal with the Federal Emergency Management Agency has certainly worked to our benefit. And I want to particularly thank you for your follow-up visits to the Virgin Islands to make certain we are continuing to receive the assistance so necessary after a disaster of this size.

We are also grateful to Chairman Don Young who found the time to come to the Virgin Islands and see first hand the damage caused by Hurricane Marilyn. And thank God for us that his interest in our problems did not end there. One of the bills before you is a direct result of Mr. Young's observation of the difficulties we are having coordinating our plans for the town of Christiansted with the use and management of the National Historic Site at Fort Christiansvaern. You might say that HR 3635 is just what doctor ordered.

Let me give you some background. On our big island of St. Croix, the largest town is Christiansted. When the Danes built this town they constructed Fort Christiansvaern to protect it. This is now a National Historic Site.

The town and the Fort grew up together. Christiansted itself has actually grown around the Fort, enclosing it. They are so close that the parking lot is the only land between the wall of the Fort and the main business area of the town.

Since the direct hit of our first Hurricane—Hugo in 1989—the economy of St. Croix and Christiansted has suffered. Plans were made to renovate the entire waterfront, creating an attractive new shopping area. We have started construction. The boardwalk is underway. The King's Alley project is near completion. There will be historic lighting and street signs. We will have landscaping and park benches. Everything will be tied into a coordinated revitalization of downtown Christiansted. I am attaching to these remarks a two page summary of the details of our plan. I also present to you a computer rendering of the waterfront area so you can see what it is that we plan to do and are doing.

Now, Mr. Chairman, the biggest roadblock to our plans has not been money, as you might have expected. It has been the National Park Service. They don't want to cooperate. There are times I have wondered if they even possess common sense.

Take the boardwalk for example. In order to tie the heart of Christiansted with its eastern historic district of Gallows Bay, it is logical and necessary to extend the boardwalk continuously from one to the other. This means the boardwalk would follow the waterfront around the base of the Fort. There would be no destruction of the Fort, its walls, or any of its property. A simple boardwalk would take the visitor from one end of Christiansted to the other. But the Park Service said no. It wasn't historic. Because no one had ever done it before it couldn't be done now. This is nonsense. It would mean the boardwalk must be interrupted. A stroller must leave the waterfront, hike all the way around the Fort, and continue on the other side.

With HR 3635, the Virgin Islands could make a simple management decision to have one continuous boardwalk. But this is only one example of how the Park Service is separating the town of Christiansted from its historic alliance and union with Fort Christiansvaern. We are having problems with the use of the parking lot. It cannot be used, according to the Park Service, to load and unload passengers from taxi vans. Yet it is the only safe and convenient place downtown to do so. Nor can the lot be used for holiday events like the historic Christmas Festival. We get bureaucratic double-talk when we ask.

The long and the short of it is that management of Fort Christiansvaern by the National Park Service has been like having a part of Christiansted declared foreign soil. HR 3635 would require the Secretary of the Interior to enter into an agreement with the Governor that puts management of the Fort back in the hands of the Government of the Virgin Islands.

Congress does not give up ownership of the property. It does not provide money for the operation and maintenance of the Fort. Those responsibilities are passed to the Virgin Islands. If we do not maintain the Fort, the Federal Government takes over again. But we will do our job, and I believe we will do it better than the Park Service. Fort Christiansvaern will once again become user-friendly for the people of St. Croix as well as the non-resident visitor.

We already have plans to raise money from parking fees at the parking lot. This is the same lot that the previous Governor tried to light, at our expense, but the Park Service said no. What is wrong with lighting the parking lot? Why not eliminate a dark area in the downtown Christiansted? This is the lot where a few years back a young woman was raped at night and a tourist was shot and killed.

I know the Park Service will oppose this bill. They don't trust us to manage this property and manage it well. But right now what we are doing in Christiansted looks better and has better care than the Fort. We repaired our storm damage quicker than the Park Service. And we will take care of the Fort which is central to the Christiansted revitalization.

I am sorry for the deterioration of relations between the Part Service and the people of Christiansted. It shouldn't be this way. The Fort and the town are one. Yet the Park Service has acted like a bad corporate citizen. There is a Big-Brother-Knows-Best attitude that has driven a wedge between the "feds" at the Fort and the people who live in and around Christiansted.

Let us manage the Fort as HR 3635 proposes. If we don't improve the property and bring it back to life, then you can take it back. But let us try. I know we will succeed.

The second bill before this Committee is HR 3634. It makes two important changes in the Organic Act of the Virgin Islands. Our Delegate, Victor Frazer, was kind enough to introduce this bill as he did HR 3635. But I readily admit the recommended changes to the Organic Act are my own.

One of my first concerns upon becoming Governor was the realization that each and every time I left the Territory the powers of my Office fell to someone else. Usually this is the Lt. Governor, but not always. When the Lt. Governor is also off-island, a succession of Cabinet officials become "acting" Governor depending on which of them is physically in the Territory.

The Organic Act requires this transfer of powers. It was enacted at a time when communications were not as immediate and reliable as they are today. Now I can be reached anywhere, even at my seat while flying on commercial aircraft. Fax machines and portable phones are common. I am in continual contact with my staff in the Territory and know about problems and policy choices as they arise.

Travel is often important and required when doing the business of the Territory. Sometimes the Lt. Governor or a member of the Cabinet or both can accomplish the task that demands travel. But often it is the Governor who must appear before the Congress or negotiate with the head of the Federal Agency. When we needed a Disaster Loan, who but the Governor could or should have appeared before you? The point is simple. Governors are required to travel. In doing so they should not be concerned about disrupting the continuity of their operation of the Executive Branch. The President does not give up his powers when traveling outside Washington or away from the nation.

There are those who have speculated that this request for a change is indicative of a lack of trust between the Governor and the Lt. Governor. Their speculation is shortsighted. It overlooks the times when a Cabinet Officer is left in charge. It fails to realize that not everyone in the line of succession can be briefed on each and every issue that may arise during the absence of the Governor.

The Governor is a lightning rod for information and ideas. He usually has the most current and reliable information before making a decision. He knows the status of negotiations and who is calling the shots. This fact has no better example than the intricate process of obtaining a Community Disaster Loan. I have been intimately involved with FEMA and my own Administration in working out the details of this critical loan. It would not be possible to brief each Gubernatorial successor on every phone call and decision made during this process. Not to mention that the federal officials involved would want to know if each "acting" Governor was making decisions based on all the conversations and information made available to the Governor.

This uncertainty is unnecessary. Modern communications have made it easy to keep in touch. The powers of the Governor can be retained in that person, wherever he or she might be. The first amendment to the Organic Act made by HR 3634 does just that. I made a decision to recommend this change after the frequent travel required of me after Hurricane Marilyn.

The second amendment would allow the Virgin Islands to obtain parity debt instead of priority debt. The Organic Act now requires that all bonds of the Government of the Virgin Islands secured by the Matching Fund be issued on a priority basis. This means that early bond purchasers have a priority over subsequent issues. Thus, as the Territory issues debt, it becomes more and more expensive as each new bond issue requires additional premiums and over-collateralization to protect the subsequent creditors from the priority issues before them.

Most States and communities are not locked into requirements for priority debt. They issue parity debt. Each new bond issue stands equal to the others and is collateralized only to the extent necessary to secure the debt.

In this amendment, the Virgin Islands would be permitted to issue parity debt. Thus it would compete on a level playing field with other communities issuing bonds. Since we now have a proven track record in the bond market. It is no longer necessary for the Congress to require that our bonds be doubly protected. We have not defaulted on any of our bond issues. Our current rating indicates we are not likely to do so. An authorization to switch from priority to parity bonds is fair to the Virgin Islands.

Now let me tell you why parity bonds are important to the Virgin Islands. Without them, it will be too expensive to issue more debt. If we cannot borrow more funds, we cannot build the new schools and improve public facilities that are now required after Hurricane Marilyn.

Of course FEMA will restore public buildings to their pre-storm condition. And it will make improvements under the hazard mitigation section of the Stafford Act. But a school with a pre-storm life of only two or three years shouldn't be put back the way it was. Not if, as planned, it was scheduled for replacement or improvement. The storm simply accelerated our need to replace the old schools. To build those schools and other public buildings, I need bond proceeds. We also are under a Federal Court Decree to build a new jail. We have no funds for construction costs. Parity bond authority will allow the Virgin Islands to go to the bond market without penalty of over-collateralization.

Mr. Chairman, those are the reasons I support HR 3634 and HR 3635. They are good bills. They allow the Virgin Islands to be more self-governing.

Thank you and the members of this Committee for considering this legislation. And please again accept my thanks and that of the people of the Virgin Islands for all you did to help us after the hurricane. I am sorry so many natural disasters in your own District have made you such an expert on the Stafford Act, Mr. Chairman. But it has certainly been of benefit to the Virgin Islands to have such an experienced disaster-fighter at the helm.

#### CHRISTIANSTED WHARF REVITALIZATION PLAN

Restoration of the Christiansted National Historic Site to a mid-nineteenth century appearance is an admirable effort by the National Park Service but not a realistic approach to an area that is playing a key role in the central business district (CBD) or Christiansted.

Addendum three amended the original memorandum of agreement between the National Park Service and the Government of the Virgin Islands by agreeing to eliminate two parking areas, among others things, that would have an adverse impact on Christiansted. The areas in question are:

- The area bounded by King Street, the Steeple Building, the Wharf, Hamilton Jackson Park and the Custom House.
- The area east of Hospital Street and west of Fort Christiansvaern.

In assessing the proposed changes one must consider the role Christiansted Wharf plays in the function of the town as the business center, employment center cultural center and tourist center on the island of St. Croix. It is a key element not only as a major parking lot providing parking for customers in the CBD, but as a focal point for various activities that have made Christiansted the town that is it today. Activities such as our cultural Christmas festival parades, civic and military parades, concerts, modern dance street performances and multi-cultural activities, the main pick-up and drop-off point for tourists contributing to our growing tourist industry and a point of departure for tourists to shop downtown, the Women Race, the triathlon transition area, and fireworks activities to name a few.

This is today's Christiansted and the wharf is where it all happens. Restoration of that area must incorporate the vision of today and the days to come, not solely the appearance of the mid-nineteenth century. Today's function of the area far outweighs that the past.

The Government envisions a restoration plan that complements the area's present role in the scheme of things, yet still maintains the integrity of the National Historic Site. In addition the plan incorporates the following:

- The proposed boardwalk along Christiansted shoreline.
- Activities that would cater to the tourist industry such as cultural events, buggy rides originating in the area, etc.
- Urban furnishings with a historic quality throughout the area.
- Vendor activities.

- Resurfacing the Hospital Street with sidewalk and resurfacing of streets within the historic site.
- Restoration of the Scale House and the Old Custom House to their mid-nineteenth century appearance.
- Landscaping and hydroseeding of lawn areas.
- Restoration of the historic well at the corner of Hospital Street and Queen Street as a fountain or other.
- Decorative historic chain fences in various areas.
- Restoration of the Thurland Home that is unique in its historic architecture.
- Wedding picture backdrop/open theater (Shakespeare in the park).
- Historic street signs.
- Parking accommodations.

With respect to accommodating parking that would be eliminated in the wharf, and in keeping the idea of more grassed area on the historic site, the parking area east of the fort will be enlarged and improved to have a surface constructed of bricks that would allow grass to grow between the bricks thereby given the appearance of a grassed area. This parking lot will be structured and managed as a pay parking lot. It is estimated that \$125,000 in parking fees can be generated each year and will be used to fund maintenance of the historic site.

#### STATEMENT OF ALLEN P. STAYMAN

Mr. Chairman and members of the House Subcommittee on Native American and Insular Affairs, I am pleased to be here today to discuss the provisions of H.R. 3634, and the Second Annual Report on the Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement in the Northern Mariana Islands. With regard to the park issues raised H.R. 3635, a representative from the National Park Service is here to discuss them.

#### H.R. 3634

Section 2 of H.R. 3634 provides that neither the Governor nor Lieutenant Governor of the Virgin Islands need relinquish authority while traveling outside the Virgin Islands on Government business.

When the Revised Organic Act was enacted, transportation and communications were far more limited than today. Therefore, it was necessary for a governor or lieutenant governor, respectively, when travelling, to delegate authority. Today, however, with instant, world-wide communications, an elected official can fully execute the duties of office even while not physically present in the territory. Section 2 would amend the Revised Organic Act to construe the term "temporary absence" so as to not include the Governor's or Lieutenant Governor's physical absence from the territory while on official government business. In light of today's technology, the proposed amendment is appropriate.

#### THE ADMINISTRATION SUPPORTS ENACTMENT OF SECTION 2.

Section 3 of H.R. 3634 deals with the bonding authority of the Virgin Islands when its bonds are secured by the coverover of Federal excise taxes on rum. The provisions would allow the Virgin Islands to issue parity debt, rather than priority debt. Current law gives greater protection to earlier issuances of debt over later issuances, with the result that later debt is subject to increased interest and fees. We understand that most local jurisdictions now issue parity debt instruments. The bonding provisions of Section 3, for the future, would place the Virgin islands on a footing similar to other communities.

The Administration has no objection to the enactment of section 3.

#### FEDERAL-CNMI INITIATIVE LABOR, IMMIGRATION, & LAW ENFORCEMENT SECOND ANNUAL REPORT

The Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement was funded with a \$7 million appropriation by the Congress in Public Law 103-332. The Administration issued its second annual report on the Initiative on June 4, 1996. We believe that the ten-page report with executive summary and recommendations brings the reader up-to-date on progress in the CNMI.

The goals of the Initiative, which are implied in the Initiative's name, are to:

- aid the CNMI in building institutions that protect against illegal labor practices and ensure fair treatment for all workers,

- assist the CNMI in enforcing its immigrations laws, and offer options for action should immigration continue unabated (with resulting societal and infrastructure costs), and
- improve CNMI and Federal law enforcement capabilities through additional funding and staffing, and new prison facilities.

In the report, we note that the combined efforts of the Government of the Commonwealth of the Northern Mariana Islands (CNMI) and Federal agencies are making progress in fulfilling the goals of the Initiative. Governor Tenorio has strongly endorsed the CNMI's actions and the increase in Federal law enforcement presence. The Federal agencies and the CNMI are working cooperatively, with the Office of Insular Affairs acting as an ombudsman, to fashion appropriate responses to the consequences of enormous growth in the CNMI. However, sustained follow-through from both the local and Federal governments is needed if Initiative goals are to be achieved.

#### RECOMMENDATIONS

I would like to highlight for the Committee the recommendations contained in the Initiative report. The Federal agencies participating in the Initiative recommend:

(1) that the Congress finalize enactment of section 2 of S. 638 to establish the minimum wage in Federal law including the annual 30-cent increases in the minimum wage contained (until very recently) in CNMI law, and

(2) that the Congress direct the CNMI to utilize Covenant funds for prison and detention facilities.

On minimum wage, CNMI workers, at present, lack Federal minimum wage protection, with the result that the Department of Labor is limited to enforcing only the overtime provisions of the Fair Labor Standards Act (FLSA). S. 638, which is before this subcommittee for action, anticipated possible CNMI backsliding on the minimum wage issue, and incorporated CNMI's annual 30-cent increases. Despite this congressional action, however, CNMI wage policy continues in vacillation. First, the 30-cent increase scheduled for last January was delayed to July 1. More recently, the CNMI Legislature rolled back the 30-cent increase to 15-cent for garment and construction workers, and eliminated all future scheduled increases. Currently, there is a dispute in the CNMI as to whether or not this minimum wage rollback bill was signed to vetoed.

S. 638 would bring fairness and stability to CNMI wage rates and important new revenue to the local government. The 30-cent increases were enacted by the CNMI Government and continue to be endorsed by the CNMI Chamber of Commerce, the Contractors Association and the Hotel Association. The only opposition is from the garment industry, which, despite its claims of hardship, continues to expand—new companies have been granted licenses and production continues to soar. Garment imports from the CNMI increased 30 percent in 1995 to \$426 million and rose over 40 percent in the first two months of 1996 over the same period last year. Other American Pacific jurisdictions, Hawaii and Guam, have proposed for decades while paying minimum wages either equal to or higher than the Federal minimum wage. The CNMI can similarly prosper, and we need not resort to the costly bureaucratic mechanism of the Federal Wage board. We believe that passing more of the benefits of the CNMI's economic growth on to the workers who make that growth possible is an important part of our joint efforts to respond to the tremendous growth and change which the CNMI has experienced over the past fifteen years. Mr. Chairman, the Administration urges that the House of Representatives take positive action on S. 638.

With regard to incarceration, existing prison and detention facilities and procedures are woefully inadequate. It is commonly believed that facilities in the CNMI accommodating 200 persons are necessary. One item on our agenda for this coming year is the work with the CNMI for specific determinations of need and capacity. In the meantime, the Administration recommended in the report that the Congress stipulate that existing CNMI Covenant funding be devoted, as first priority, to prison and detention construction. We understand that Governor Tenorio is amenable to using fiscal year 1995 Covenant funds for this purpose, and we look forward to CNMI legislative action on this matter.

#### AGENDA

During this next year the Initiative agencies will deal with a number of issues, including immigration. New census figures show that the CNMI population grew in the fifteen short years from 1980 to 1995 from 18,000 to 60,000, and that in the process, the indigenous population shrank from 72 percent of 38 percent of the total population. With regard to the imposition of immigration controls, it should be noted

that the Immigration and Nationality Act (INA) may not fully address the immigration problems in the CNMI. Full application of the INA could have unintended economic consequences for the CNMI. However, should the CNMI not establish more effective control of immigration by early next year, the Federal agencies participating in the Initiative will develop options to increase the Federal role in CNMI immigration. In developing these options, consideration must be given to local self-government and local economic needs.

To summarize, the Initiative is moving toward its goals. First, with respect to labor, local labor department officials are receiving training for recognizing and dealing with illegal employer activity, the Department of Labor continues its wage hour investigations, National Labor Relations Board caseloads are up substantially, and the Administration continues to recommend that the Congress support wage stability with enactment of S. 638 and the CNMI's 30-cent annual minimum wage increases into Federal Law. For immigration, the new computerized tracking system is moving from prototype to implementation, and if necessary, Initiative members in the next year will develop options for increasing the Federal role in immigration. With regard to law enforcement, dollars are up, staffing is up, and caseloads are up. Additionally, the Administration recommends that prison and detention facilities be constructed with funds available under the CNMI Covenant.

Mr. Chairman, over the past year the Initiative has a record of accomplishment. But more importantly, for this year, it has had an agenda for action. We believe that the Initiative's goals will be met

---

#### STATEMENT OF ROGER G. KENNEDY

Thank you for the opportunity to offer the Department of the Interior's views on H.R. 3635, a bill to direct the Secretary of the Interior to enter into an agreement with the Governor of the Virgin Islands to transfer authority to manage Christiansted National Historic Site.

Mr. Chairman, we oppose enactment of H.R. 3635 for two basic reasons. First, H.R. 3635 is essentially a national park closure bill. As we have stated before, we do not want to begin the process of parcelling out units of the National Park System. Needless to say, transferring this unit to the Government of the Virgin Islands would set a bad precedent. Also, we are concerned that the Government of the Virgin Islands is not equipped to manage a nationally significant cultural site.

At Christiansted National Site the public learns about the role of Denmark in the colonization and subsequent development of the Virgin Islands. The buildings themselves are tangible reminders of a segment of America's heritage that is rapidly disappearing. Located on Saint Croix, it is one of four units of the National Park System in the United States Virgin Islands and provides operational support for another one of the parks in the islands, Buck Island National Monument.

As a result of a grass-roots petition to seek national recognition of the site, the Secretary of the Interior designated the Virgin Islands National Historic Site through the order of March 4, 1952. It was redesignated by the Secretary's Order of January 16, 1961, as Christiansted National Historic Site. A series of memoranda of agreement outline the relationship between the Virgin Islands Government and the National Park Service.

The 1952 agreement established the cooperative spirit between the two entities. The five subsequent agreement defined the various roles and responsibilities of the National Park Service and the Government of the Virgin Islands regarding such subjects as museum exhibits, use of the buildings, restoration of the historic scene, and control of traffic.

In February of 1995, I appeared before the Subcommittee on National Parks, Forests and Lands to oppose a bill that called for a study of the National Park System with a view toward deauthorizing certain units. Passage of H.R. 3635 would, in a small but dangerous way, begin that process. Each of the 369 units of the National Park System in 49 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands was established by an Act of Congress, Presidential Proclamations, or Secretary's Orders. They represent the initiatives of Congress and numerous Administrations to preserve and protect our Nation's natural and cultural heritage and to provide for recreational opportunities. All of these units represent diverse public resources under our permanent stewardship for the use and enjoyment by present and future generations. Without the laws, proclamations, and orders that established our parks, it is possible that many of our nationally significant resources would be lost forever.

All 369 units of the system are nationally significant in their own right. Whether it is Yellowstone, Glacier, and Independence National Historical Park, or Christian-

sted National Historic Site, each place is important, not just to a few individuals, but to all of us.

The National Park Service and congressional leaders of the past intended that the system be broadly representative of diverse natural and cultural elements of our nation. Clearly, Christiansted National Historic Site represents a chapter in our nation's history not found anywhere else. And clearly, Congress has entrusted the National Park Service to manage these resources in perpetuity.

If the stewardship responsibility of Christiansted National Historic Site were to be transferred to the Government of the Virgin Islands, it could be viewed as an indication that the national significance of this valuable resource no longer exists.

We also question the Government of the Virgin Islands' ability to manage this resource to the standards established in the National Park System. We wonder whether the territory possesses both the expertise and the financial resources to manage the park well. The territory's record of managing cultural sites is uneven at best. The Government of the Virgin Islands' parks are geared toward active, day-use recreation, like ball fields and basketball courts, and we applaud the territory's efforts for providing these services. However, its administration of its two cultural sites, Fort Frederick in Fredericksted and Fort Christian in Charlotte Amalie, falls short of the standards set by the National Park System. In 1984, the territory assumed title and control of Government House, a structure located within the national historic site. Unfortunately, the territory has not been able to maintain this structure adequately. Furthermore, we understand, that within the last six months, the Governor proclaimed that the territory should not undertake any new obligations because of its financial burdens.

Additionally, we are concerned by indications that one of the territory's reasons for desiring management control of the site is economic development. Certainly it is within the Governor's purview to stimulate economic development in the territory—it is sorely needed, but not at the expense of the historic site. The territory has developed plans to construct a boardwalk near the Fort and an earlier plan proposed to build a restaurant in the commandant quarters of Fort Christianvaern. The National Park Service's job is to protect the nation's heritage for current and future generations, not to promote economic development.

As Assistant Secretary Frampton stated in a recent letter to Governor Schneider, the National Park Service fully supports partnerships as part of the effort to preserve the outstanding resources in the Virgin Islands. We will be pleased to work with the Governor to resolve the issues of concern to him and to preserve the compatibility of the Fort and the town.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions.

PETER FERRARA

# Tinkering with the success of liberty

There's one part of the United States that has enjoyed a soaring economy since 1980, including nine consecutive years of growth at an incredible 13 percent or more.

It's part of our country where annual incomes for workers have more than doubled, while the unemployment rate has plummeted from 15 percent to 4 percent. Gross domestic product has increased more than fourfold, yet inflation is virtually nonexistent.

Where is this economic paradise? It's the Commonwealth of the Northern Marianas Islands, the smallest and most distant U.S. possession, "where America's day begins." For the past 15 years, the CNMI has been a laboratory of liberty, a vibrantly successful experi-

*Taxes were slashed to minimal levels, with no property, sales or inheritance taxes at all. Income taxes were cut by 90 percent.*

ment in the unregulated free market. But all is not well in paradise. The response of the Clinton administration to this booming economic success has been to try to shut it down.

The United States liberated these islands from Japan during World War II, in some of the most brutal fighting of the entire war. From 1945 to 1978, the Northern Mari-

anas Islands were a trust territory of the United Nations, under the protection of the United States. But in 1975, the islands overwhelmingly chose to sever their ties with the United Nations and to become an American commonwealth. The people of the Northern Marianas are now U.S. citizens.

In 1978, when Washington turned control over to the new Commonwealth government, the islands suffered with a fragile subsistence economy. Average personal income was far below the poverty line. Most roads were unpaved. Electricity was unreliable, with regular brownouts and blackouts. Most houses did not even have running water.

How did the Northern Marianas achieve such a remarkable turnaround? They did it the old-fashioned way: free market capitalism.

Reversing the history of heavy-handed bureaucratic control from Washington, and seeing the remarkable success of the free market Asian tigers such as Japan, Taiwan and Korea, the young U.S. commonwealth adopted a radical free market regime.

Taxes were slashed to minimal levels, with no property, sales or inheritance taxes at all. Income taxes were cut by 90 percent. Capital gains taxes were assessed at less than half the U.S. rate. Controlling their own customs, they eliminated duties and tariffs, and slashed excise taxes to a minimum.

The Northern Marianas also opened their doors to foreign investors, with virtually no restrictions on investment and capital flow. They also adopted an open door policy for foreign labor, allowing businesses to freely hire foreign "guest workers."

Regulatory burdens have been minimized. Licenses and permits for foreign entry, new businesses, construction and development are quickly and easily granted.

Incorporating and starting a new business is actually simpler and easier than in most U.S. states. Every other regulation under local control has been rationally restricted to avoid harming economic growth.

The results, in just 15 years, have been described above. This U.S. commonwealth has enjoyed exceptional sustained economic growth, a steadily rising standard of living, and dramatic increases in life expectancy and the average level of education. Once a dismal outpost of failed state socialism, the islands have now been thoroughly integrated into the dynamic economy of the Pacific Rim.

The Clinton administration should be nurturing the CNMI as a model for economic development. But, instead, it is trying to subvert or reverse the local policies that have provided this success.

The administration is seeking to impose the federal minimum wage on the commonwealth, even though it has been proven to destroy jobs in such lower-cost economies more efficiently than bombing by the U.S. Air Force. They are seeking a federal government takeover of immigration, with a vow to slash the number of foreign guest workers allowed in. This will devastate the local economy, as the Northern Marianas do not have nearly enough indigenous labor to meet the booming demand.

Mr. Clinton's bureaucrats also want to take away local control over customs and import restrictions. They are demanding that the commonwealth government sharply increase taxes, ostensibly to reduce their reliance on U.S. aid. But the facts are hard for some in Washington to accept: The islands are already almost independent of federal money, and have offered to do without it altogether.

The rationale for this virtual declaration of war is that a few employers in the U.S. commonwealth have engaged in severe labor abuses, particularly of foreign guest workers. In truth, these actions are simply crimes, and should be prosecuted as such. But the islands are the only U.S. jurisdiction that has neither a U.S. marshal nor a federal prosecutor assigned there.

Earlier this year, the governor of the Northern Marianas offered this deal in congressional testimony. The U.S. government can keep the \$27 million per year it is providing in assistance for the islands. In return, the commonwealth would continue to keep local control over taxes, immigration and regulations, including the minimum wage.

The Republican Congress should take the governor up on his offer. Then it should use part of the money for true law enforcement in the Northern Marianas, including a federal marshal and federal prosecutor. Newt Gingrich and company should adopt this cause, and save the endangered laboratory of liberty.

*Peter J. Ferrara is a senior fellow of the National Center for Policy Analysis.*



PREPARED STATEMENT OF WILMA A. LEWIS

Supplemental Sheet for the Testimony of:

Wilma A. Lewis  
Inspector General  
Department of the Interior  
1849 C. Street N.W.  
Washington, DC 20240  
Phone: (202) 208-5745

Hearing on the Federal-Commonwealth of the Northern Mariana Islands  
Initiative on Labor, Immigration, and Law Enforcement and Related  
Northern Mariana Islands Legislative Reforms Before the  
Subcommittee on Native American and Insular Affairs,  
Committee on Resources,  
U.S. House of Representatives

June 26, 1996

---

#### Summary of Testimony

- Discussion of audit reports issued by the Department of the Interior's Office of Inspector General to the Commonwealth of the Northern Mariana Islands during the past three years:
  - Management of Public Land
  - Status of Improvements in Financial Management and Program Operations
  - Assessment and Collection of Income Taxes
  - Income Tax Revenues
  - Contracting and Contract Administration, Commonwealth Utilities Corporation
  - Utilities Rate Structure, Commonwealth Utilities Corporation
  - Followup of Recommendations Concerning Capital Development Funds
  - Followup of Recommendations Concerning the Economic Development Loan Fund, Commonwealth Development Authority
  - Followup of Recommendations Concerning the Economic Development Loan Fund, Mariana Islands Housing Authority
- Status of recommendations made in the audit reports.
- Long-range audit strategy of the Office of Inspector General for audits of the Commonwealth of the Northern Mariana Islands.
- Comments regarding the importance of oversight hearings as they pertain to the resolution and implementation of Inspector General audit recommendations in the insular areas.

Mr. Chairman and members of the House of Representatives Subcommittee on Native American and Insular Affairs, Committee on Resources:

I am pleased to be here today to provide comments for the hearing on the Federal-Commonwealth of the Northern Mariana Islands initiative on labor, immigration, and law enforcement and related Northern Mariana Islands legislative reforms. Specifically, I have been asked to comment on audits performed in the past 3 years by the Department of the Interior's Office of Inspector General in the Commonwealth of the Northern Mariana Islands (CNMI, or the Commonwealth). I have been asked to include in my testimony a discussion of: (1) our most recent CNMI audit report, issued in March 1996, on the management of public lands in the CNMI and (2) the response and constructive actions, or lack thereof, by the Commonwealth to resolve issues raised in our audit reports.

I also have been informed that I may be asked questions pertaining to certain ongoing disputes regarding property interests on Water Island in the United States Virgin Islands. I have decided to recuse myself from this matter. Prior to my current position as Inspector General, I served for 19 months as the Associate Solicitor for the Division of General Law in the Department's Office of the Solicitor. During my tenure as the Associate Solicitor, staff whom I supervised, in conjunction with the Department of Justice, served as counsel for the Department of the Interior in related litigation involving Water Island. Accordingly, in order to protect the integrity of my position and of the Office of Inspector General, I have delegated all decision-making responsibility regarding any Office of Inspector General involvement in ongoing Water Island matters to Richard Reback, Chief of Staff and General Counsel in the Office of Inspector General. I therefore request that any questions regarding Water Island be directed to Mr. Reback.

During the past 3 years the Office of Inspector General has issued nine audit reports to officials of the CNMI. These audits have covered a variety of financial and program areas and have included audits whose objective was to report on the Commonwealth's implementation of recommendations made in audit reports dating back as far as October 1982. The nine audit reports contained 63 recommendations for corrective action based on weaknesses or deficiencies identified during the audits. (Fifty-four of the 63

recommendations were addressed to the Commonwealth, and 9 were addressed to the Office of Territorial and International Affairs, now the Office of Insular Affairs.)

The following is a summary of the findings in the nine audit reports:

- **Management of Public Land (March 1996):** We reported that the Commonwealth had lost \$118.4 million on completed exchanges of public land, could lose \$70.1 million on pending exchanges, and lost revenues of \$25.1 million on exchanged public land that was leased to a developer by landowners. These problems arose because the Commonwealth did not effectively develop and implement management policies, procedures, and controls related to land exchanges. Specifically, the Commonwealth did not exchange public land for private land of comparable value, use current land valuations in land exchanges, and consider the revenue that could be realized from the commercial development of exchanged public land. In addition, we reported that lease revenues of \$565,000 were lost and that the Government may lose additional lease revenues of \$469.2 million over the unexpired period of the 12 leases we reviewed because of the lack of properly implemented policies and procedures to ensure that appropriate lease agreements were established and effectively managed. Specifically, minimum lease payments were not based on the appraised fair market value of the property; gross receipts rental payments and interest on past-due rentals were not properly assessed; and collection actions were insufficient. Finally, we found that 208 homestead recipients improperly received a total of \$7 million from the unauthorized sale or lease of their lots and that 12 of the 23 homestead lots reviewed were awarded to applicants who were ineligible or who did not have the greatest need. We made seven recommendations for corrective action.

The Commonwealth did not respond to our November 1995 draft audit report. Following the issuance of our final audit report, we received a response from the Governor of the Commonwealth which stated that new land exchange regulations had been issued effective May 25, 1996, and that the Governor's certification or the Legislature's declaration or determination of a public purpose would be required as the first step in a land exchange. Based on our initial evaluation of the response, we considered the two recommendations pertaining to land exchanges unresolved because the new

regulations provided by the Governor are essentially a restatement of previous land exchange regulations issued in January 1988--regulations that were ineffective in preventing the conditions described in our audit report. For example, the regulations were not changed to address our recommendation that land exchanges should be of comparable value based on current appraisals.

In addition, the Governor's response stated that it was not possible to develop and implement changes needed to comply fully with our recommendations pertaining to lease management in a short time, but that the Division of Public Lands was "seriously considering" issuing regulations governing the leasing of public lands. While we agree that the Division of Public Land's decision to hire two new employees and request an additional attorney with responsibilities in the area of lease management are positive steps, the absence of any definitive plans from the Commonwealth regarding the development of policies and procedures to correct the deficiencies in lease management and to guide the actions of Commonwealth employees compels us to consider our recommendations regarding lease management unresolved.

The Governor's response also stated that it would be impossible to perform the recommended inspections and reviews pertaining to homestead lots because of insufficient staff. While we appreciate the challenges that the problem of insufficient resources always poses, we do not believe that the Commonwealth's intent to simply "do what it can" to accomplish the inspections in the face of its expectation that it will not "go very far with it, given the current understaffing" is a satisfactory response. Accordingly, we consider our recommendations regarding homestead administration unresolved.

Finally, the Governor's response indicated that an Attorney General's opinion has been requested on the possibility of seeking recovery of illegal and/or improper monetary gains resulting from the sale and/or lease of homestead lots, in accordance with our recommendation. However, the recommended inspections and reviews would, of course, be necessary in order to pursue any available recovery.

In view of the foregoing, we consider six of the seven recommendations unresolved (that is, responsible Commonwealth officials did not adequately address or agree with the recommendations). We believe that, given the significant problems in the Commonwealth's management of its public lands and the millions of dollars at stake, the Commonwealth's response to the audit report is inadequate.

**- Status of Improvements in Financial Management and Program Operations (November 1995):** This report summarized major long-standing problems in financial management and program operations as identified in significant audit reports issued by our office, by the Commonwealth Public Auditor, and by independent public auditors from October 1982 through August 1995. We concluded that, although the Commonwealth had made improvements in financial management, expenditure control, revenue collection, and program operations, further improvements were needed. Although we did not make any new recommendations, we identified goals for improvement. We also reported that the Commonwealth could achieve improvements by working with the Department of the Interior's Office of Insular Affairs to identify priorities for future technical assistance and by implementing the recommendations made in previous audit reports.

**- Assessment and Collection of Income Taxes (March 1995):** We reported that the Commonwealth lost an estimated \$13.8 million and may lose an additional \$17.5 million in tax collections because it did not conduct an effective audit function of tax returns, did not impose applicable tax penalties, and did not investigate potential criminal violations of its income tax laws. Also, voluntary compliance with tax laws may have been hindered because the Commonwealth did not have an income tax investigative and prosecution function, an effective collection process, and adequate security over taxpayer records. Of the report's 17 recommendations for corrective action, all were considered resolved and reported as implemented.

**- Income Tax Revenues (November 1994):** We reported that the Commonwealth's income tax system did not produce the tax revenues needed to fund governmental operations and to match Federal funds for a 1994 Federal capital improvement grant. Taxes estimated at \$23 million would not be realized because of the Commonwealth's failure to revise its tax laws by the end of 1993. We also found that low income taxpayers

were subject to excess taxation. Of the report's two recommendations for corrective action, both were considered resolved and reported as implemented.

- **Contracting and Contract Administration, Commonwealth Utilities Corporation (November 1994):** We reported that the Utilities Corporation was not compensated by a contractor for revenues lost when the Corporation agreed to offset a contractor's unsubstantiated claim for \$3.6 million in compensation against the Corporation's own claim for \$3.7 million in liquidated damages. The Corporation's claim against the contractor was based on lost revenues that it attributed to equipment downtime and additional operating costs. In addition, the Utilities Corporation had incurred \$343,000 in additional contract costs for foreign currency exchanges and was expected to incur between \$1.3 million and \$4.8 million more because of incorrect conversions from U.S. dollars to Japanese yen when making contract payments. Further, the Utilities Corporation obligated \$13.9 million in excess of funds available, purchased goods and services totaling \$16.6 million without competition, and incurred costs of at least \$863,000 for consulting services that were not necessary and construction projects that were not completed. Of the report's 11 recommendations, 6 were considered resolved and reported as implemented, and 5 were considered resolved but not yet implemented.

- **Utilities Rate Structure, Commonwealth Utilities Corporation (September 1994):** We reported that the Utilities Corporation defaulted on obligations totaling over \$92.8 million and thereby incurred additional loan interest charges of more than \$16.4 million. This occurred because the Corporation did not establish a rate structure that would produce sufficient revenues to provide for its (1) operating costs and (2) debt service and contractual obligations for capital improvement projects and purchases of equipment. Of the report's four recommendations, one was considered resolved and reported as implemented, and three were considered resolved but not yet implemented.

- **Followup of Recommendations Concerning Capital Development Funds (July 1994):** We reported that the Commonwealth and the Office of Insular Affairs did not implement fully or effectively 9 of the 12 recommendations made in our February 1992 audit report. (Seven of the 12

recommendations were addressed to the Commonwealth, and 5 were addressed to Insular Affairs.) These recommendations were designed to ensure that: (1) the Commonwealth established an effective financial management system to account for and control funds provided by the Department of the Interior for capital improvement projects and (2) Insular Affairs provided effective oversight of projects financed with Federal funds. As a result of the Commonwealth's failure to implement the recommendations, funds of over \$2.2 million targeted for capital development were not used for allowable purposes and loan agreements were not executed to ensure that the funds were used for revenue-producing projects. (The \$2.2 million was in addition to \$11 million that we questioned in the 1992 report.) We made 11 new recommendations during the followup audit (3 to the Commonwealth and 8 to Insular Affairs), all of which were considered resolved and reported as implemented.

- **Followup of Recommendations Concerning the Economic Development Loan Fund, Commonwealth Development Authority (July 1994):** We reported that the Commonwealth did not implement fully or effectively any of the 20 recommendations made in our September 1990 audit report. These recommendations were designed to ensure that the Commonwealth complied with Federal laws regarding use of the Loan Fund and took legal action against officials who failed to carry out their fiduciary responsibilities. As a result of the Commonwealth's failure to implement the recommendations, the principal in the Loan Fund decreased by \$3 million. Further, the Development Authority had not accrued and/or collected interest charges of over \$2.8 million on Loan Fund assets that were used improperly. (These amounts were in addition to \$11.6 million that we questioned in the 1990 report.) We made six new recommendations during the followup audit, of which three were considered resolved and reported as implemented and three were considered unresolved.

- **Followup of Recommendations Concerning the Economic Development Loan Fund, Mariana Islands Housing Authority (July 1994):** We reported that the Commonwealth did not implement fully or effectively the three recommendations addressed to the Commonwealth in our February 1991 audit report and that Insular Affairs had implemented the one recommendation made to that office in the same report. These recommendations were designed to ensure that the Commonwealth

reorganized the Housing Authority so that it could be operated efficiently and effectively for the purpose of providing low income housing and that Insular Affairs performed periodic on-site program reviews. As a result of the Commonwealth's failure to implement the recommendations, the principal in the Direct Family Home Loan Program decreased by \$980,000, mainly because the Housing Authority continued to use Program assets improperly. Further, the Housing Authority had not accrued interest charges of about \$500,000 on Program assets that were used improperly. (These amounts were in addition to the \$2.5 million that we questioned in the 1991 audit report.) We made five new recommendations during the followup audit (four to the Commonwealth and one to Insular Affairs), all of which were considered resolved and reported as implemented.

As the foregoing demonstrates, these nine audit reports covered a vast array of issues pertaining to the Commonwealth's efforts to develop and effectively implement policies, procedures, and controls related to the purchase, use, and disposal of public land; financial management and program operations; the assessment and collection of income taxes and the establishment of a taxation system capable of producing sufficient revenues; the acquisition of plant, equipment, goods, and services related to its power, sewer, and water facilities; the establishment of a utilities rate structure that would produce sufficient revenues to provide for debt service, capital improvement projects, and new equipment costs; and oversight and control over expenditures of capital and economic development funds. The results of these audits have clearly shown that the Commonwealth has paid insufficient attention to matters relating to opportunities for increasing revenues and collections and for reducing expenditures and operating costs. As described earlier, these deficiencies have cost the Commonwealth millions of dollars in foregone or uncollected revenues and in unnecessary or inappropriate expenditures.

The most current information available to us from officials within the Commonwealth and Insular Affairs regarding implementation of audit recommendations made during the past 3 years indicates the following: 45 of the 63 recommendations have been resolved and reported as implemented; 9 of the 63 recommendations have been resolved but are not implemented; and 9 of the 63 recommendations are unresolved. Several of these



unresolved and unimplemented recommendations were made in audits dating back to July 1994.

Thus, to date, responsible officials within the Commonwealth have reported that they have implemented 36 of the 54 audit recommendations made during the past 3 years and that 9 of the remaining 18 recommendations have been resolved. However, as our followup audits on earlier recommendations concerning the Capital Development Funds and the Economic Development Loan Fund showed, recommendations, although resolved, are not always implemented. Further, recommendations reported as implemented are not always implemented fully or effectively. Specifically, only 4 of 25 resolved recommendations from earlier audits of those programs had been implemented fully or effectively at the time of the followup audits, notwithstanding the passage of several years.<sup>1</sup> Based on the followup audits, we made 22 new recommendations to correct long-standing weaknesses and deficiencies in those programs. Of the 22 new recommendations, 13 were directed to the Commonwealth, and 9 were directed to the Office of Insular Affairs. Nineteen of these 22 new recommendations have now been reported as implemented.

The long-range strategy developed by our office for the Commonwealth has focused, and will continue to focus, on revenues and expenditures of government operations. This is because our audits have repeatedly raised questions about the Commonwealth's ability and determination to: (1) raise sufficient revenues locally to fund governmental operations and a portion of its infrastructure needs and (2) carry out its operations in an efficient and cost-effective manner.

We are encouraged by this Subcommittee's interest in the Office of Inspector General's audit activities within the Commonwealth. We believe that oversight hearings such as this, if held periodically, could serve as the necessary catalyst to encourage government officials in the insular areas to

---

<sup>1</sup> Thirty-six recommendations were made in the earlier audits, 32 of which were not implemented fully or effectively at the time of the followup audits. Of the 36 recommendations, the Commonwealth had agreed with 20 of the 30 recommendations made to it and the Office of Insular Affairs had agreed with 5 of the 6 recommendations made to that office.

resolve and implement Inspector General audit recommendations. Such hearings would serve a particularly useful purpose because the Department of the Interior does not have the same level of authority or influence in the insular areas as it does in its own offices and bureaus to ensure that audit recommendations are resolved properly and implemented fully and effectively. In the absence of appropriate oversight of resolution and implementation activities, the benefits that can be achieved from the implementation of audit recommendations may not be fully realized.

This concludes my prepared statement. I would be happy to respond to any questions that the Subcommittee may have concerning my testimony.

PREPARED STATEMENT OF JUAN N. BABAUTA

Resident Representative Juan N. Babauta  
Subcommittee on Native American and  
Insular Affairs  
June 26, 1996

---

Mr. Chairman:

Thank you for the opportunity to testify.

My position on reform in the Northern Marianas is on record with this Subcommittee. I testified here in January 1995 on proposals you made in H.R. 602, regarding minimum wage and immigration. I will, however, summarize my position here this afternoon and in that context comment on the two proposals in this year's report by the Interior Department on the joint CNMI-Federal law enforcement initiative.

I will also use some of my time — as I do each time I testify before Congress — to repeat my call for the reform I consider most necessary, least controversial, and most easily accomplished: giving the people of the Northern Marianas representation here in Congress.

### **Core Problem: Unrestricted Immigration**

Seventeen months ago I testified before you on H.R. 602. Two general principles should apply in determining congressional policy towards the Northern Marianas, I said: first, any policy should fulfill the fundamental federal responsibility to protect human and civil rights throughout our nation; and second, any policy should favor reduced federal involvement at the local level and promote instead increased local responsibility.

Applying those two principles, I testified in favor of the Chairman's proposals to institute federal wage review boards in the Northern Marianas and to put a cap on immigration.

I opposed, however, direct federal management of our borders. I opposed federal management because the joint initiative had begun. Its purpose was to restore professionalism and reestablish confidence in the Northern Marianas' ability to manage immigration locally. I said the initiative should be given a chance to prove its worth.

Seventeen months later, I am not encouraged.

To me the core problem for CNMI immigration is not the mechanics of administration. Rather the problem is the sheer, overwhelming number of immigrants. Immigration has no limit; it is wide open, unrestricted.

This is not what was intended when Congress approved the Covenant and provided for local control of immigration. As the Senate Interior Committee wrote at that time: "...this provision is included to cope with the problems which unrestricted immigration may impose upon small island communities. Congress is aware of these problems."

Local control of immigration was conceived as a tool for protecting the indigenous people. If we choose to use it as such, I believe we should retain that control. If we decide we do not care to preserve our status in our islands, then the argument for local control ceases.

And we have not acted to preserve our status.

Resident Representative Juan N. Babauta  
 Subcommittee on Native American and  
 Insular Affairs  
 June 26, 1996

---

The CNMI recently released its preliminary report of the 1995 mid-decade census. Immigration remains unchecked. Indigenous people are outnumbered 2 to 1. And a government economist predicts another 32,000 residents will be added by the turn of the century, leaving the indigenous outnumbered by over 4 to 1.

Thousands of these new residents will be the children of alien workers, but they will also be US citizens by virtue of their birth in the Northern Marianas. These children of "temporary" workers are being born in our hospital at a rate double or triple the rate of babies born to indigenous parents, and within a generation have the potential to become a controlling political force in the Northern Marianas.

The indigenous people of the Northern Marianas have put themselves at risk of losing control of their own home by allowing themselves to become a minority.

We have done so out of what I consider a misguided notion that economic development in the Northern Marianas can only be accomplished along with unlimited population growth. It is a notion promoted by those who benefit from having the largest possible labor pool at the lowest possible wage.

It is a notion I do not accept; and it is a notion I believe a cap on immigration would dispel.

Indeed, look at the garment industry. An existing cap on the number of garment workers<sup>1</sup> did not prevent that industry from adding \$100 million in sales from FY94 to FY95 — 30% annual growth.

Placing a cap on new immigration will not bring economic ruin to the CNMI. It will help stop the erosion of the control indigenous people have over their own home; and a cap will provide breathing room for us to consider what kind of a future we want for our islands.

### **Recommendation #2: Prison Facilities**

This year's report on the joint law enforcement initiative makes two recommendations. The second — investment in prison facilities — is required largely because of unchecked immigration, which results in overburdening of all public facilities: schools, roads, health care, and public safety.

Increased drug trafficking, government corruption, and crimes of violence are closely linked in the Northern Marianas to immigrants and immigration. But building better prisons, necessary though it may be, treats the symptom and not the disease.

And it seems a strange distortion that funds designated by the Covenant to help raise the standard of living of the people of the Northern Marianas are now recommended to be used instead to raise the standard of living of criminals.

In fact, Covenant funds should not be the sole source for prison facilities in the Northern Marianas. Because one-third of the inmates<sup>2</sup> are

Resident Representative Juan N. Babauta  
 Subcommittee on Native American and  
 Insular Affairs  
 June 26, 1996

---

immigrants from the Freely Associated States—over whom the Northern Marianas immigration laws have no control. These immigrants are permitted to enter by virtue of the Federal compacts with the Micronesian nations. In approving the Compacts the Congress also agreed to offset the fiscal costs to the Northern Marianas and other US Pacific islands. And Congress ordered an annual report on these costs. Unfortunately, in ten years the Interior Department has never delivered any report.

By acknowledging the need for an \$11 million investment in prison facilities, however, Interior has indirectly reported to Congress on one cost of the Compacts of Free Association. It seems clear, therefore, that fiscal responsibility for construction of prison facilities and for operational costs attributable to inmates from the freely associated states should be born by the Federal government.<sup>3</sup>

### **Recommendation #1: Federal Minimum Wage**

Interior's first recommendation is for federalization of minimum wage with a thirty cent annual increase until the CNMI reaches the Federal minimum.

I have previously called this proposal "a blunt economic instrument" and it should not be confused with CNMI Public Law 8-21, which also set up a mandatory thirty cent annual increase. That law contained an important feedback mechanism: a wage review board to advise the CNMI Legislature on the effects of each year's increase.

Unfortunately, the well balanced local law has fallen by the wayside. In 1994 the Governor did away with the board. When it was reinstated in 1995 by the Legislature, he appointed as board chairman a highly placed official in the garment industry. Not surprisingly, this reconstituted board first recommended delaying any increase in the minimum wage and then recommended doing away altogether with the step-wise approach to raising the minimum wage—all on the thinnest of economic analysis. Last week, the Governor is reported to have signed into law this second recommendation.

The Interior Department report calls this chain of events "vacillation." I would not be so kind. And let me add that these events have occurred for one primary reason: the undue influence of the garment industry in the government of the Northern Marianas. For at the same time the local minimum wage law was being systematically taken apart, the Chamber of Commerce, the local hotel association, the contractors association, and others in the community were expressing their support for increasing the minimum wage.

In light of these facts, I continue to support the proposal to use the federal wage board system to determine the minimum wage in the Northern Marianas. Take the decision out of the political arena and base it on economics.

Resident Representative Juan N. Babauta  
 Subcommittee on Native American and  
 Insular Affairs  
 June 26, 1996

---

### The Simplest Reform: Representation in Congress

I began this testimony on Northern Marianas legislative reforms by expressing the general principles that Congress should protect civil rights throughout our nation and should promote local responsibility.

In keeping with these two principles I believe this subcommittee must take up the question of representation in Congress for the people of the Northern Marianas.

There may be no explicit "civil right" to such representation, but two hundred years of practice have established an irrefutable precedent for people living in non-State areas to have a voice in their nation's law-making body. And if Congress wishes to promote a greater degree of "responsibility" in the Northern Marianas, I would maintain there is no better way than to end our political exclusion from the American family.

The case of the people of the Northern Marianas is simple: We are citizens of the United States. We live within the borders of the United States. We are governed by the laws of the United States enacted by this Congress. Yet we lack what would seem the most basic right of our citizenship: a voice in our nation's government.

And so we ask to be represented here. We ask to have our own delegate here in the House of Representatives.

We ask for no special treatment. For Congress has since 1790 admitted delegates to the House to represent the residents of non-State areas of our nation. Chairman Young, Mr. Hastings and Mr. Metcalf, Mr. Kildee, Mr. Williams and Mr. Johnson of this Subcommittee all hail from geographic areas once represented in Congress by delegates. And Mr. Faleomavaega, Mr. Romero-Barceló, and Mr. Underwood are present day representatives of non-State areas — three of the five such in the 104th Congress.

What we ask, therefore, is only what Congress has regarded as necessary and proper for 200 years, even up to this very moment.

I am not the first nor the only person from the Northern Marianas to request representation in Congress. The Marianas Political Status Commission that negotiated the Covenant of political union between the Northern Marianas and the United States made this same request. I quote from the summary report of their third round of negotiations in 1973:

The Marianas' representatives have requested that the new Commonwealth government be entitled to have a non-voting delegate in the United States Congress, similar to the non-voting delegates in Congress representing Guam and the Virgin Islands.<sup>4</sup>

The Commission's request was supported in principle by the Special Representative of Presidents Nixon and Ford, Ambassador F. Haydn Williams.

In 1985, representation for the Northern Marianas was again recommended, this time by the Commission on Federal Laws called for in Section 504 of the Covenant. The Commissioners, appointed by President

Resident Representative Juan N. Babauta  
 Subcommittee on Native American and  
 Insular Affairs  
 June 26, 1996

---

Reagan and including Congressman Robert J. Lagomarsino, long a member of this Committee, made as their very first recommendation a Northern Marianas delegate in the US House of Representatives.

I ask that the Commission's recommendation be made part of the record.

More recently the Commonwealth Legislature has repeatedly petitioned the Congress for a delegate to the House. Though political control has changed back and forth in the last three Legislatures, by joint resolution they each have asked to have what all other constituent parts of the US have: representation in Congress.

I ask that the most recent of those joint resolutions be added to the record.

The only explicit objection to Northern Marianas representation is found in the analysis of the Covenant by the Marianas Political Status Commission.

During the negotiations the MPSC, with the support of the Executive Branch of the U.S. Government, was not able to obtain a firm commitment for such a non-voting delegate. The principal reason given was the small population in the Marianas compared with the population in Guam and the Virgin Islands at the time those territories were given non-voting delegates.

The Northern Marianas' population of 15,000 at that time was considerably less than the populations of Guam (86,926) and the Virgin Islands (63,200) had been when those territories were granted nonvoting delegates in 1972.

Two years after approving the Covenant without a provision for a Northern Marianas delegate, however, Congress reduced the population standard by granting a delegate to American Samoa with a resident population of 27,000, most of whom were not US citizens.

Today, with a US citizen population of 27,512 and a total population of 59,913 the Northern Marianas is clearly within the threshold of population established by precedents both historical and contemporary.

Mr. Chairman, in opening your hearing on H.R. 602 you said that "the territories... are due the same treatment as other political divisions of the United States." That is a sound goal. But the Northern Marianas does not even ask that. All we ask is for the same treatment as the US territories: the opportunity to be represented in Congress.

Give the people of the Northern Marianas what all other US citizens living within this nation's borders have: a voice in Congress.

Thank you.

---

<sup>1</sup> An administrative moratorium on the number of workers in the garment industry was lifted in 1996 by the Governor. A legislative attempt to reimpose that moratorium was vetoed, the veto then overridden.

<sup>2</sup> March 1993 data.

Resident Representative Juan N. Babauta  
Subcommittee on Native American and  
Insular Affairs  
June 26, 1996

---

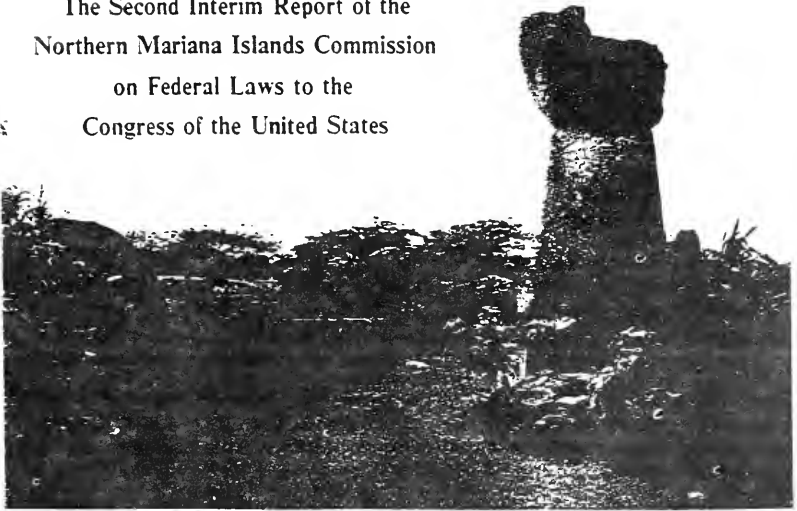
<sup>3</sup> These costs should also be a federal responsibility with respect to any inmates detained under the exercise of Federal law.

<sup>4</sup> Summary Report of the Marianas Political Statues Commission on the Third Session of Status Negotiations, December 19, 1973.



# WELCOMING AMERICA'S NEWEST COMMONWEALTH

The Second Interim Report of the  
Northern Mariana Islands Commission  
on Federal Laws to the  
Congress of the United States



August 1985

Benigno R. Fitial  
Chair and  
Commissioner

Pedro A. Tenorio  
Vice-Chair and  
Commissioner

Joel J. Bergama  
Commissioner

Jesus C. Borja  
Commissioner

Dewey L. Falcone  
Commissioner

Hon. Robert J. Lagomarsino  
Commissioner

Edward DLG. Pangalinan  
Commissioner

Daniel H. MacMeekin  
Executive Director

The Honorable Thomas P. O'Neill, Jr.  
Speaker of the House of Representatives  
Room H-204  
The Capitol  
Washington, D.C. 20515

Dear Mr. Speaker:

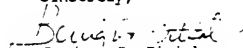
I have the honor of submitting to you the second interim report of the Northern Mariana Islands Commission on Federal Laws. The Commission, appointed by the President pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263, March 24, 1976), is instructed "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner."

The Commission is required to make its final report and recommendations to Congress within one year after termination of the Trusteeship Agreement pursuant to which the United States now administers the Northern Mariana Islands. Before that time, the Commission is authorized to "make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status."

The enclosed second interim report of the Commission is comprehensive and for all practical purposes may be the final report of the Commission. The date the Trusteeship Agreement will be terminated is not now known, however, and developments between now and that date may make desirable submission of further recommendations to Congress by the Commission. Accordingly, even though the Commission's staff will be disbanded after submission of this report, the report is labelled as interim rather than final.

Legislation to implement the Commission's recommendations is incorporated within the report. The Commission urges the Congress to enact this legislation at its earliest opportunity.

Sincerely,

  
Benigno R. Fitial

## RECOMMENDED CHANGES IN FEDERAL LAW

A nonvoting delegate to the United States Congress.Recommendation.

Legislation should be enacted to provide the Northern Mariana Islands representation in the United States Congress by conferring the status of nonvoting Delegate to the United States House of Representatives on the Resident Representative to the United States for the Northern Mariana Islands.

The statutes.

All legislative powers granted the Federal Government by the United States Constitution are vested in the Congress of the United States, which consists of the Senate and the House of Representatives. U.S. Const., Art. I, § 1. The members of the Senate and of the House of Representatives are elected by the citizens of the States of the United States. Id. § 2, cl. 1; Amend. XVII, amending Art. I, § 3, cl. 1.

Present applicability.

The United States Constitution contains no provision for representation in Congress of citizens residing in areas within the jurisdiction of the United States but not part of any State. Even prior to adoption of the Constitution, however, section 12 of the Ordinance of 1787—which established the pattern for subsequent congressional legislation on territorial government—authorized a delegate to Congress from the Northwest Territories. 1 Stat. 52. The delegate selected was afforded "a seat in Congress with a right of debating, but not of voting." Id. Provision for a nonvoting delegate to Congress to represent areas within the United States that are not part of the United States has been common practice since that time. See generally E. Brown, The Territorial Delegate to Congress and Other Essays 3-38 (1950); chapter 7, "The Delegate in Territorial Relations," in E. Pomeroy, The Territories and the United States, 1861-1890 (rev. ed. 1969); and chapter 7, section 3, "Status of Delegates and Resident Commissioner," in 2 L. Deschler, Deschler's Precedents of the United States House of Representatives (1977) (House Document 94-661).

At the present time, the District of Columbia, Guam, the Virgin Islands, and American Samoa are represented by nonvoting "Delegates"

- 54 -

to the United States House of Representatives while Puerto Rico is represented by a nonvoting "Resident Commissioner."\*

Delegates to the House of Representatives (including the Resident Commissioner from Puerto Rico) provide their constituencies with a voice in the legislative process. Although they cannot vote on the floor of the House, they serve on committees and, unless the Rules of the House of Representatives provide otherwise, are permitted to vote in committee. They receive the same compensation, allowances, and benefits as do Members of the House of Representatives.

The Northern Mariana Islands is not represented in the Congress of the United States.

Section 901 of the Covenant authorizes, and Article V of the Constitution of the Northern Mariana Islands provides for, election by the people of the Northern Mariana Islands of a Resident Representative to the United States. See also 1 Code of the Northern Mariana Islands §§ 4101 et seq. (1984), as amended by Northern Mariana Islands Public Law 3-92 (1984). This representative, however, does not have the status of a nonvoting delegate to the United States Congress.

#### Discussion.

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). See also Reynolds v. Sims, 377 U.S. 533, 555, 564-65 (1964); Gray v. Sanders, 372 U.S. 368, 381 (1963). The Congress of the United States has plenary power to make the laws under which the people of the Northern Mariana Islands, as good citizens, must live. U.S. Const., Art. IV, § 3, cl. 2; Trusteeship Agreement, Art. 3. Nothing in the United States Constitution or in the Covenant, however, requires that the people of the Northern Mariana Islands be granted a voice in the United States Congress, to speak on the laws under which the people of the Northern Mariana Islands must live. Indeed, the population of the Northern Mariana Islands is such that were it able to elect a full-fledged Member in the House of Representatives, the Northern Mariana Islands would be disproportionately over-represented in the House.

---

\*Public Law 91-405, § 201, 84 Stat. 845 (1970), D.C. Code § 1-401 (1981) (District of Columbia); 48 U.S.C. §§ 1711-1715 (Guam and the Virgin Islands); id. §§ 1731-1735 (American Samoa); id. §§ 891-894 (Puerto Rico).

Provision of a delegate to the House of Representatives, coupled with the large measure of local self-government granted by Article I of the Covenant, constitutes a reasonable compromise between the requirements of representative democracy and the realities of small population and distant location.

Much that was said in support of creation of the office of Delegate to the United States House of Representatives from American Samoa applies with equal strength in favor of establishing an office of nonvoting delegate from the Northern Mariana Islands:

The justification for direct territorial representation for American Samoa in Congress goes back to 1790, wherein the Congress provided for a nonvoting delegate from "the territory south of the River Ohio," which later became the State of Tennessee. Since that time, some 30 other U.S. territories have been represented by nonvoting delegates to the Congress before they became States of the Union. Populations of the different territories have varied from as many as 5,000 to 259,000 when they were represented by nonvoting delegates.

The rapidly changing economic and social conditions in both the continental United States and throughout the Pacific area provide a compelling reason for direct representation of the Territory of American Samoa in the House of Representatives. Presently, the offshore areas are not affected by general legislation unless they are specifically mentioned in the legislation or the legislation is made applicable to the territories and possessions of the United States. In many instances, the legislative objectives of the offshore areas range, inter alia, from education and welfare assistance to medical and health insurance, housing, agricultural assistance, unemployment compensation, prevailing wage rates, small businesses, labor unions and management, immigration, airport construction assistance, foreign trade, commercial fishing, highway and harbor construction assistance, air routes, water and electricity, oil and watch quotas, veterans benefits, and many others.

Under provisions of [this legislation], a nonvoting delegate from American Samoa can more effectively represent and interpret the needs, welfare and interests of the territory. Furthermore, the nonvoting delegate will carry the responsibility of maintaining the contacts and liaison with the various committees of the Congress and the officials of the executive branch of the Federal Government. Additionally, the nonvoting delegate will relieve other Members of Congress of the necessity of

dealing with individual problems and related subject areas that directly affect the interests of the Territory of American Samoa.

[This legislation] is in keeping with the best of American traditions to encourage greater participation by the local residents in the affairs of their government. Over the years, Congress has continually provided greater self-government and responsibility for its territories. The enactment of [this legislation] would especially lessen any lingering impressions of American colonialism, as it is thought of in some quarters of the world.

House Report 95-1458, at 3-4 (1978).

Congress should now enact legislation to provide for nonvoting representation of the Northern Mariana Islands in the United States House of Representatives. Every area within the American political system that has a permanent population is represented in the Congress of the United States. The people of the Northern Mariana Islands have now done all that is required of them to become part of that political system and Congress, in approving the Covenant, has given its assent.

To be sure, the Northern Mariana Islands has a smaller population than any of the jurisdictions now represented in Congress. Its population of 17,000 persons, however, is not of an order of magnitude different from American Samoa's population of approximately 31,000. As noted in the excerpt quoted from the House Report, above, nonvoting delegates have represented as few as 5,000 persons.

The proposed legislation would confer the status of nonvoting delegate on the Resident Representative to the United States for the Northern Mariana Islands. This position was authorized by section 901 of the Covenant and has been established by Article V of the Constitution of the Northern Mariana Islands.\* See also 1 Code of the Northern Mariana Islands §§ 4101 *et seq.* (1984), as amended by Northern Mariana Islands Public Law 3-92 (1984). The negotiators of the Covenant drafted section 901 with a view toward the possibility that Congress might confer nonvoting delegate status on the Resident Representative. Report of the Joint Drafting Committee on the Negotiating History of the Covenant, at C-4 (1975), reprinted in Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of

---

\*The Constitution of the Northern Mariana Islands was deemed approved by Presidential Proclamation 4534 in 1977. 42 Fed. Reg. 56593.

- 57 -

the Northern Mariana Islands," 94th Cong., 1st Sess. 374, 406 (1975). See also Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 65, 90 (1975). Section 901 provides that the Resident Representative "must be a citizen and resident of the Northern Mariana Islands, at least twenty-five years of age, and, after termination of the Trusteeship Agreement, a citizen of the United States." Article V of the Constitution of the Northern Mariana Islands adds that the Resident Representative shall have been a resident and domiciliary of the Northern Mariana Islands for at least seven years immediately preceding the date of taking office and provides for popular election of the Resident Representative to a two-year term.

The Delegates from Guam, the Virgin Islands, and American Samoa likewise must be at least twenty-five years of age on the date of their election and must be inhabitants of the territories from which they are elected. 48 U.S.C. §§ 1713, 1733. The Delegates from Guam and the Virgin Islands at election must have been citizens of the United States for at least seven years. Id. § 1713(b). The Delegate from American Samoa, where most residents are nationals rather than citizens of the United States, is required to owe allegiance to the United States.\* Id. § 1733(b). The Delegates from Guam, the Virgin Islands, and American Samoa are popularly elected and, at the time of election, may not be a candidate for any other office. Id. §§ 1711, 1713(d), 1732(a), 1733(d).

The qualifications and election procedures for the office of Resident Representative to the United States for the Northern Mariana Islands are thus basically consistent with the qualifications and election procedures for the territorial Delegate offices. The legislation here proposed, which confers delegate status on the Resident Representative, establishes qualifications and election procedures for that office similar to those for the office of territorial Delegate. Because there is no inconsistency between the requirements in the proposed legislation and those in the Covenant, there is no need to amend either the Covenant or the Constitution of the Northern Mariana Islands.\*\* The proposed legislation does,

---

\*The distinction between "citizens" and "nationals" of the United States is not well-defined. Nationals--like citizens--owe allegiance to the United States and are entitled to its protection, but do not qualify for some rights and privileges granted by statute only to citizens.

\*\*To avoid the necessity of amendment of either of these fundamental documents, the proposed legislation also retains the title, "Resident Representative," rather than substituting the more common title, "Delegate." Puerto Rico's "Resident Commissioner" is a precedent for this variation in nomenclature.

- 58 -

however, impose the additional requirement that the Resident Representative, on the date of election, be a candidate for no other office.

Regular general elections in the Northern Mariana Islands are held on the first Sunday in November in odd-numbered years. Constitution of the Northern Mariana Islands, Art. VIII, § 1 and Schedule on Transitional Matters § 10; Presidential Proclamation 4534, 42 Fed. Reg. 56593 (1977). The Resident Representative, under Northern Mariana Islands law, is elected at that time to a two-year term. Constitution of the Northern Mariana Islands, Art. V, §§ 1, 2; Northern Mariana Islands Constitutional Convention, Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands 124-25 (1976).\* The Resident Representative takes office on the second Monday in January of the following year. Constitution of the Northern Mariana Islands, Art. VIII, § 4.

By contrast, Representatives and Delegates to the Congress are elected on the first Tuesday after the first Monday in November in even-numbered years and take office on the third day in January of the following year. 2 U.S.C. § 7. Representatives and the Delegates from the District of Columbia, Guam, the Virgin Islands, and American Samoa serve two-year terms. D.C. Code § 1-401(a) (1981) (District of Columbia); 48 U.S.C. § 1712(a) (Guam and the Virgin Islands); id. § 1732(a) (American Samoa). The Resident Commissioner from Puerto Rico, however, serves a four-year term. Id. § 891.

The legislation here proposed allows the people of the Northern Mariana Islands to elect the Resident Representative as provided in their Constitution, even though the Resident Representative will be elected and take office in different years (and on different days) than the Representatives and other Delegates. The uniform federal election date was established in 1871 to make voting in more than one jurisdiction difficult and to prevent news of results in earlier elections from influencing the outcome in later elections. 45 Cong. Globe 112, 141 (1871).\*\* These concerns are of little moment in the case of the Northern Mariana Islands at the present time. A few persons may in fact be able to vote for both the Resident Representative for the Northern Mariana Islands and a Representative

---

\*The Resident Representative's term may be increased to no more than four years by popular initiative. Constitution of the Northern Mariana Islands, Art. V, § 2.

\*\*Prior to 1871, each State set its own election date. Id. See U.S. Const., Art. 1, § 4, cl.1.



- 59 -

or Delegate from another jurisdiction. But voter registration requirements, the Resident Representative's limited powers in Congress, and the time and money required to travel between the Northern Mariana Islands and other jurisdictions make unlikely intentional efforts to subvert the electoral process by taking advantage of the discrepancy in election dates. As for preventing earlier election results from influencing the outcome in later elections, modern communications have made that goal elusive even when elections are held on the same day but in different time zones.

Requiring election of the Resident Representative on the same day as the election of Representatives and other Delegates to the House of Representatives is a reasonable alternative to the proposal here made. But to achieve this uniformity the Northern Mariana Islands would either have to amend its constitution to change its regular general election from the first Sunday in November in odd-numbered years to the first Tuesday after the first Monday in November in even-numbered years or suffer the costs of holding an extra election every other year. (While a federal statute would supercede the provisions of the Constitution of the Northern Mariana Islands regarding election of the Resident Representative, it would not affect the provisions as they relate to election of other public officials in the Northern Mariana Islands. The extra election would still be required unless the people of the Northern Mariana Islands amended their constitution.)

Under the proposed legislation, the first Resident Representative with the status of nonvoting Delegate to the House of Representatives would be elected at the regular general election in the first odd-numbered year subsequent to enactment of the legislation. The effective date of the proposed legislation is not postponed until after termination of the trusteeship, even though the Covenant will not be fully implemented until that time. The date for termination of the trusteeship is not yet known, and may not arrive for several years. In the meantime, Congress will make many legislative decisions affecting the Northern Mariana Islands, decisions in which the Northern Mariana Islands should have a voice. Indeed it is in this period, when many members of Congress are little acquainted with the particular needs of the Northern Mariana Islands, that participation by the nonvoting Resident Representative may be most important. In embracing the Covenant, the people of the Northern Mariana Islands have already made their decision to be part of the United States. No purpose is served by delaying their election of a nonvoting Resident Representative to the United States House of Representatives until some uncertain date in the future when the trusteeship is finally terminated.

- 60 -

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation:

An Act to confer the status of nonvoting Delegate to the United States House of Representatives on the Resident Representative to the United States for the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Mariana Islands shall be represented in the United States Congress by the Resident Representative to the United States authorized by section 901 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263). The Resident Representative shall be a nonvoting Delegate to the House of Representatives, elected as hereinafter provided.

Sec. 2. (a) The Resident Representative shall be elected by the people qualified to vote for the popularly elected officials of the Northern Mariana Islands at the regular general election, on the day and month set by section 1 of Article VIII of the Constitution of the Northern Mariana Islands, in the first odd-numbered year subsequent to enactment of this Act and thereafter as provided in the Constitution of the Northern Mariana Islands. The Resident Representative shall be elected at large, by separate ballot, and by a majority of the votes cast for the office of Resident Representative. If no candidate receives such majority, on the fourteenth day following such election a runoff election shall be held between the candidates receiving the highest and the second highest number of votes cast for the office of Resident Representative. In case of a permanent vacancy in the office of Resident Representative by reason of death, resignation, or permanent disability, the office of Resident Representative shall remain vacant until a successor shall have been elected and qualified.

(b) The term of the Resident Representative shall commence on the second Monday of January following the date of the election.

Sec. 3. To be eligible for the office of Resident Representative, a candidate shall:

(a) be at least twenty-five years of age on the date of the election;

- 61 -

(b) be a citizen of the United States, provided, however, that prior to termination of the Trusteeship Agreement for the former Japanese Mandated Islands, 61 Stat. 3301, the candidate may be a person defined as a United States citizen or United States national in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977;

(c) have been a resident and domiciliary of the Northern Mariana Islands for at least seven years prior to the date of taking office;

(d) not be, on the date of the election, a candidate for any other office.

Sec. 4. Acting pursuant to legislation enacted in accordance with the Constitution of the Northern Mariana Islands, the Government of the Northern Mariana Islands will determine the order of names on the ballot for election of Resident Representative, the method by which a special election to fill a vacancy in the office of Resident Representative shall be conducted, the method by which ties between candidates for the office of Resident Representative shall be resolved, and all other matters of local application pertaining to the election and the office of Resident Representative not otherwise expressly provided for herein.

Sec. 5. Until the Rules of the House of Representatives are amended to provide otherwise, the Resident Representative for the Northern Mariana Islands shall receive the same compensation, allowance, and benefits as a Member of the House of Representatives, and shall be entitled to whatever privileges and immunities that are, or hereinafter may be, granted to the nonvoting Delegate from the Territory of Guam.

\* \* \*

#### Land grant colleges.

#### Recommendation.

Legislation should be enacted to permit land-grant funding of a post-secondary educational institution in the Northern Mariana Islands.

MEMBERS  
OF  
THE NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Benigno R. Fitia, Chairman\*  
Member, House of Representatives,  
Northern Mariana Islands Commonwealth Legislature  
Saipan, Northern Mariana Islands

Pedro A. Tenorio, Vice Chairman  
Lieutenant Governor,  
Commonwealth of the Northern Mariana Islands  
Saipan, Northern Mariana Islands

Joel J. Bergsma\*\*  
Chief Counsel, House of Representatives,  
Northern Mariana Islands Commonwealth Legislature  
Saipan, Northern Mariana Islands

Jesus C. Borja  
Attorney at Law, Borja, Mitchell, and Salas  
Saipan, Northern Mariana Islands

Dewey L. Falcone\*\*\*  
Attorney at Law, Falcone and Falcone  
Los Angeles, California

Robert J. Lagomarsino†  
Member, United States House of Representatives  
Ventura, California

Edward DLG. Pangelinan  
Attorney at Law; Legislative Assistant to  
Congressman Ben Blaz, United States House of Representatives  
Saipan, Northern Mariana Islands and Olney, Maryland

\*                    \*                    \*

\* Replaced James A. Joseph on February 19, 1985.

\*\* Replaced Agnes M. McPhetres on February 19, 1985.

\*\*\* Replaced Myron B. Thompson on February 19, 1985.

† Replaced the late Congressman Philip Burton on March 9, 1984.

## HOUSE OF REPRESENTATIVES

TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE  
FIRST REGULAR SESSION, 1996

HOUSE JOINT RESOLUTION NO. 10-1

## A HOUSE JOINT RESOLUTION

To request that the United States Congress establish a non-voting Delegate from the Northern Mariana Islands within the U.S. House of Representatives.

## Offered by Representatives:

Diego T. Benavente,

Joaquin G. Adriano, David M. Apatang, Vicente M. Atallg, Jesus T. Altao, Oscar M. Babautfa, Rosiky F. Camacho, Crispin I. Deleon Guerrero, Melvin O. Falsao, Maria (Malua) T. Peter, Karl T. Royes, Pete P. Reyes, Manuel A. Tencio, P. Michael P. Tencio and Ana S. Teregeyo

Date: January 17, 1996

## HOUSE ACTION

Adopted: January 17, 1996

## SENATE ACTION

Adopted: January 18, 1996

  
Evelyn C. Fleming  
House Clerk



TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

H. J. R. NO. 10-1

FIRST REGULAR SESSION, 1996

A HOUSE JOINT RESOLUTION

To request that the United States Congress establish a non-voting Delegate from the Northern Mariana Islands within the U.S. House of Representatives.

1 TAKING NOTE that the Covenant negotiating history makes it clear that  
2 Section 901 does not preclude the Government of the Northern Marianas from  
3 requesting that a Delegate from the Northern Mariana Islands be established in the  
4 Congress of United States;

5 FINDING that the current status of Commonwealth-federal relations, which  
6 has been marred by miscommunication, misinterpretation, and misinformation is  
7 further exacerbated by the lack of a constant and vigilant Commonwealth voice  
8 and presence in the House of Representatives and its various committees and  
9 subcommittees;

10 FINDING that the Northern Marianas Commonwealth Legislature has  
11 overwhelmingly approved two resolutions, namely House Joint Resolution 8-5 and  
12 Senate Joint Resolution 9-6, urging the Congress of the United States to establish a  
13 Delegate from the Northern Marianas within the U.S. House of Representatives;

14 OBSERVING that Article V, Section 2, of the Commonwealth Constitution as  
15 amended by Constitutional Amendment 24, provides that the United States may  
16 confer the status of nonvoting member delegate in the United States Congress on  
17 the Resident Representatives;

18 RECOGNIZING with gratitude that on August 10, 1994, Guam Delegate Robert  
19 Underwood introduced H.R. 4927 in the 103rd Congress, to provide a nonvoting  
20 delegate to the House of Representatives to represent the Commonwealth of the  
21 Northern Mariana Islands;

## HOUSE JOINT RESOLUTION NO. 10-1

1 BELIEVING fervently that the pursuit of the delegate seat is imperative in  
2 attaining full status as a member of the American political family in which thus  
3 far the Northern Mariana Islands remains the only U.S. insular area not to be  
4 represented in the United States Congress;

5 HOLDING TO BE TRUE that non-voting delegate status for the Resident  
6 Representative would neither diminish the full force and effect of the Covenant to  
7 Establish a Commonwealth of the Northern Mariana Islands in Political Union  
8 with the United States of America nor in any sense abrogate, qualify, or release  
9 rightful claims to local self-government contained in Article I, Section 103 of the  
10 Covenant; It is

11 RESOLVED by the House of Representatives of the Tenth Northern Marianas  
12 Commonwealth Legislature, the Senate concurring, that the 104th Congress of the  
13 United States of America is hereby requested to:

14 (1) CONFER the status of nonvoting delegate in the United States  
15 Congress on the Resident Representative;

16 (2) PROVIDE that the Delegate from the Northern Mariana Islands  
17 receive the same compensation, allowance, benefits and be entitled to those  
18 same privileges and immunities as a Member of the United States House of  
19 Representatives;

20 (3) WORK CLOSELY with the present Resident Representative in the  
21 drafting of federal legislation necessary to realize the Delegate from the  
22 Northern Mariana Islands; and

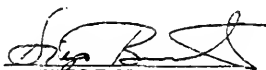
23 RESOLVING FURTHER that the Speaker of the House and the President of the  
24 Senate shall certify and the House Clerk and the Senate Legislative Secretary shall  
25 attest to the adoption of this Resolution and thereafter transmit certified copies to:  
26 the Honorable William Jefferson Clinton, President of the United States; the  
27 Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the  
28 Honorable Richard Armey, Majority Leader of the U.S. House of Representatives;  
29 the Honorable Richard Gephardt, Minority Leader of the U.S. House of  
30 Representatives; the Honorable Don Young, U.S. House of Representatives; the  
31 Honorable Elton Gallegly, U.S. House of Representatives; the Honorable George  
32 Miller, U.S. House of Representatives; the Honorable Iini F.J. Paleomavaega, U.S.  
33 House of Representatives; the Honorable Robert Underwood, U.S. House of  
34 Representatives; the Honorable Eleanor Holmes Norton, U.S. House of


## HOUSE JOINT RESOLUTION NO. 10-1

1 Representatives; the Honorable Carlos Romero-Barcelo, U.S. House of  
 2 Representatives; the Honorable Victor Frazer, U.S. House of Representatives; the  
 3 Honorable Al Gore, Vice President of the United States and President of the U.S.  
 4 Senate; the Honorable Robert Dole, Majority Leader of the U.S. Senate; the  
 5 Honorable Tom Daschle, Minority Leader of the U.S. Senate; the Honorable Frank  
 6 Murkowski, U.S. Senate; the Honorable J. Bennett Johnston, U.S. Senate; the  
 7 Honorable Daniel Inouye, U.S. Senate; the Honorable Daniel Akaka, U.S. Senate; and  
 8 the Honorable Bruce Babbitt, Secretary of the U.S. Department of Interior.

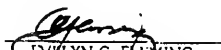
Adopted by the House of Representatives on January 17, 1996  
 and by the Senate on January 18, 1996

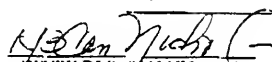
CERTIFIED BY:

  
 DIEGO T. BENAVENTE  
 Speaker of the House

  
 JESUS R. SABLÁN  
 President of the Senate

ATTESTED BY:

  
 EVELYN C. FLEMING  
 House Clerk

  
 HENRY DLG. SAN NICOLAS  
 Senate Legislative Secretary



PREPARED STATEMENT OF SEBASTIAN ALOOT



**TESTIMONY OF SEBASTIAN ALOOT  
ACTING ATTORNEY GENERAL  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**before the**

**UNITED STATES HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON NATIVE AMERICAN AND INSULAR AFFAIRS**

**June 26, 1996**

Thank you Mr. Chairman. My name is Sebastian Aloom and I am the Acting Attorney General of the Commonwealth of the Northern Mariana Islands ("CNMI"). I appreciate this opportunity to testify before your Committee concerning the recent report by the Department of the Interior on the labor, immigration and law enforcement initiative in the CNMI (the "Task Force Report") and related issues.

**1. The Covenant and Self-Determination**

This Congress began with much discussion of the Contract with America. A generation ago, the people of the Northern Mariana Islands entered into their own contract with America--the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America." That contract, remarkable for its time, translated America's thirty year trusteeship over the Northern Mariana Islands into a unique political relationship as part of the United States but preserving local self-determination over such things as immigration, minimum wage and taxation. It also signaled the beginning of the end of the Trust Territory Government, something one Micronesian leader characterized as a system of federal administration where the United States had the territory and the Micronesians had the trust. Although much has changed in the intervening two decades, the vision of the leaders that crafted the Covenant and the reasons for its preservation of local control over what are essentially local issues have not.

At the outset we note that in defining the relationship between the Commonwealth and the U.S. government, Section 902 of the Covenant prescribed a very specific consultative process for addressing "all matters affecting the relationship" between the two. While we have invoked these procedures to address our concerns, we note that the U.S. government never has. Instead, we have found ourselves

continually coming to Washington to address matters before Congress that could otherwise be dealt with under the express terms of the Covenant.

## **2. The Benefits and Cost of Economic Success**

The most obvious of the changes in the past 21 years has been the phenomenal economic growth of the Commonwealth. In the last decade alone, the total reported business gross revenue has skyrocketed from some \$224 million in 1985 to nearly \$1.5 billion last year. In the same period, both the Gross Island Product and domestic loans have more than tripled and bank deposits have increased nearly four-fold. Visitor entries are five times what they were in 1985 and visitor expenditures have increased from \$122 million to \$522 million during the decade.

The results of this robust economy have been dramatic. Formerly a forgotten and dependent federal reservation, the Commonwealth is now virtually self-supporting. General Federal funding of its operations declined from two-thirds of the General Fund revenues in 1978 to zero after 1992. While Federal funding is still provided for capital improvement projects and direct federal grants, the amount of Federal funds received in FY 1995 is now only about 10% of total revenues. Formerly a government with significant and growing deficits, the Commonwealth now operates with a surplus and the elimination of past deficits is within our grasp.

However, the benefit of modernization and dramatic economic growth has not been without its cost. Like the rest of America, we have witnessed an increase in crime, in the use of drugs, in social dislocations and in violations of civil rights and labor laws. At the same time, increased public and governmental scrutiny has shed light on poor working and living conditions, particularly among the many alien workers in the Commonwealth, and has prompted even more complaints, some substantiated and some not, of improper or illegal conduct on the part of private employers or governmental entities. We in the CNMI continue to be troubled by the continued characterization of these problems as "human rights abuses" by those outside the CNMI, when in reality these problems are exactly the same problems that the rest of America is experiencing in the last quarter of the twentieth century. The issue is not that they have happened...the issue is what is being done to address them.

## **3. The Tenorio Administration Takes Charge and Responsibility**

When the Tenorio Administration came into office in January, 1994, it faced a host of problems, including a stagnant economy, fiscal mismanagement and chaotic or ineffective law enforcement, particularly in the area of labor and immigration. And when Governor Tenorio appeared before the last Congress, he was not coy about the Commonwealth's past failures in these areas. Nor was he reticent about his intention to honestly address those problems. Since then, he has not hesitated from making the hard, sometimes unpopular, decisions necessary to implement corrective action. He has put into place the major steps to redress years of inattention and the problems that

had arisen during that time. As a result, the focus of public debate has now shifted to the degree of success that these solutions are now beginning to achieve.

#### 4. Executive Branch Task Force Report

Earlier this month, the Department of the Interior released its second annual interagency task force report on labor, immigration and law enforcement in the CNMI. The Task Force Report acknowledges that the CNMI and Federal agencies are making clear progress in law enforcement but nonetheless makes two recommendations for legislation: (1) to federalize the minimum wage in the CNMI and (2) to direct the CNMI to spend Covenant funds for construction of new prison facilities.

The Report chronicles the activities of federal agencies addressing their federal responsibilities in the Commonwealth, much of which has been paid for with funds originally committed to infrastructure development in the Commonwealth. This has been done with the support and urging of Governor Tenorio, who recognizes that protection and enhancement of our human infrastructure is perhaps as important to our future as a community than the quality of our roads. While we appreciate the fact that these agencies have been asked to do their job, we are concerned that it is being done with our Covenant funds, not with federal dollars. We are not alone in that concern. The House Appropriations Committee in its report on the Interior Appropriations bill for FY'97 expressed concern about the lack of financial commitment by other Federal agencies to the immigration, labor and law enforcement initiative in the CNMI and warned that the Committee would be closely watching with respect to future funding decisions on the initiative. We are also concerned about the inherent inefficiencies in having Washington study the problem, rather than allowing us to devote the same resources to getting more of the job done.

And in fact, we are getting the job done. Perhaps the best example of the progress in addressing the problems facing alien workers comes from the Philippines, where most of the foreign workers in the CNMI are from originally. In the face of growing concerns over reports of labor problems encountered by Filipinos working in the CNMI and against a backdrop of serious abuses of its citizens in other parts of the world, the Philippine government imposed a highly publicized ban on the deployment of several classes of workers to the Commonwealth. Based on the Tenorio Administration's labor reform and enforcement initiatives and a spirit of cooperation unmatched by other jurisdictions, that ban was lifted early last month. Indeed, a week ago I accompanied Governor Tenorio to Manila to meet with President Ramos. I can report that the topic of discussion was *not* the past issues that divided us but the cultural, historical and economic issues that bind us together.

## 5. The Successful Implementation of the Computerized Alien Tracking System has Helped to Address Immigration Concerns

A key area addressed in the Task Force Report involves the immigration of guest workers into the CNMI. Identified as an area of potential concern several years ago, Congress allocated a portion of CNMI Covenant monies to fund the design and implementation of a computerized tracking and identification system to monitor alien residents and guest workers. Known as the Labor and Immigration Identification and Documentation System or "LIIDS"; this prototype system has recently become operational and is making dramatic progress. Already thousands of guest worker records have been entered into the data base, with some 27,000 expected to be processed by next month.

This information is used to support the issuance of CNMI entry permit cards that will dramatically facilitate enforcement efforts. Through a special high security application integrated with an image capture/storage/retrieval system, it will far surpass what any INS system currently can do. Conceptually it will have the capability to capture information on arrival and departure in real time, immediately to access individual status and issue secure documentation to all foreign workers and alien residents upon arrival — requirements that the INS can not fulfill with its current system. The LIIDS project is being developed in consultation with the U.S. Immigration and Naturalization Service which is providing an Independent Validation and Verification process. In fact, the INS is enthusiastic about this project as a prototype to be developed for other applications in the United States.

This system is expected to advance significantly the ability of the CNMI to track the whereabouts of guest workers and to monitor labor and immigration status and for entry and exit control purposes. The CNMI has geographical advantages in controlling entry since air and sea are the only options, all which will be closely monitored and regulated. Those who overstay their tourist or work permits are the real concern, and the LIIDS system will be designed to address this problem. In addition, we have established a separate deportation fund that will provide the necessary financial resources to pay for the actual deportation of those who are in the CNMI illegally. Actual deportee numbers are projected to increase four-fold this year with the implementation of the new system and enhanced enforcement.

We believe that LIIDS, and the concerted effort being devoted to immigration issues, will enable the CNMI to overcome the real problems in administering the immigration system. However, the concerns discussed in the Task Force Report raise policy questions that go beyond the simple administration of the immigration laws, but challenge our fundamental right to control our own economic future. The simple fact of the matter is that our economy has outgrown the number of U.S. citizens available. We do not have the adult population to sustain our work force and economy. Even if our

entire able-bodied population worked in the private sector, we would still need large numbers of foreign guest workers for some years to come.

This is not a unique situation. There are many examples around the globe where countries with excess labor export workers to countries with insufficient populations. The exporting country benefits from the payments their citizens receive and by having more jobs. The employing country benefits from growth, lower costs, and greater competitiveness. We are mindful of the need to monitor the situation, to guard against abuses, to correct problems as they occur and to take care that employers carry their fair share of infrastructure and other costs.

But we are troubled by the paternalistic observation in the Task Force Report of the perceived "irony" that local control of immigration has had the opposite affect from what was intended, because "native Chamorro and Carolinian culture and influence" somehow is thought to have been diminished, based solely on current population numbers. The island culture has managed to survive three centuries of Spanish domination, and periods of German and Japanese occupation all preceding the 50 year affiliation with the United States. In fact, many of us believe that immigration can enrich our culture, much as it has done in the United States itself. The conclusion that the CNMI has failed to carry out a clear policy based on public understanding and assent, by acquiescing to the "desires of those who can make the most profit from bringing in alien workers" loses sight not only of this history but also of why temporary workers are on the islands in the first place. Their contribution to the economy is the investment and development that they make possible. When you consider the contribution to our Gross Island Product and our tax base of the businesses that employ nonresident workers, their presence does not just help our economy, it is a significant part of our economy.

We are particularly troubled by the misleading figures used in the Task Force Report to support conclusions that are not justified by the facts. For example, in an apparent effort to demonstrate the distorting impact of guest workers on the future composition of the population, the Report states as follows:

Already twenty-five percent of the CNMI school population of 8,880 students are children of aliens. Virtually the entire increase in these children of aliens has occurred within the last decade, with most of the increase in the last five years. Based on the under-five population, geometric increases in this student population can be expected in the next decade.

*Task Force Report at 4*

The clear implication of this passage is that these are the children of guest workers who are having so many children in the CNMI that the schools, and eventually the Commonwealth, will be overtaken. What this Report ignores, and what makes the

Report so misleading, is the fact that fully 80% of these students are the children of Micronesians for whom CNMI is *required* by U.S. law to provide educational and other services under the terms of the Compact of Free Association. We are now engaged in litigation before the Federal courts seeking to clarify our immigration obligations to citizens of the Micronesian Freely Associated States. In addition, Guam and the Commonwealth have recently initiated litigation seeking to force the Executive Branch to finally discharge its long-ignored duty to seek annual appropriations to address the negative impacts of free immigration by Micronesians. The State of Hawaii is now considering whether to join this litigation. I hope that by clarifying this important point, this Committee will begin to see that the problem of immigration lies on both sides of the Pacific.

The problem is not that guest workers are in the CNMI in the first place, but that they may not be temporary. That is a problem that can be, and is being dealt with through the LIIDS program. To keep these workers out in the first place is not a solution, but only another probably larger problem. We agree with the recognition expressed by the Task Force that any immigration control options "must give consideration to self-government in the CNMI and local economic development needs." But we can not agree with the conclusion that should the CNMI somehow fail to make immigration control "become more effective" (whatever that means) within the next year, that the federal role in local immigration matters should automatically increase. No one in the INS, let alone the CNMI, wants that result.

#### **6. A More Rational Approach to the Minimum Wage Issue**

There seems to be no more vexing policy issue in Washington, D.C. regarding the CNMI than the minimum wage. Like the long and contentious debate in both the Senate and the House in recent months, whether or not to raise the minimum wage is an issue about which there can be, and is, an honest difference of opinion. It is one that confounds the most responsible decision makers. Just like the U.S. Congress, the CNMI legislature has members on both sides of the issue. And depending on the composition of the legislature at any given time, the legislation that is enacted will likely change. This issue has been vigorously debated in the CNMI for many years, long before the Tenorio administration took office. And it has been the subject of debate on the mainland for decades. Dismissing this legitimate public debate as a "policy of vacillation," the Task Force Report would pre-empt the democratic process in the CNMI and arbitrarily impose a Federal scheme that bears little relation to the circumstances in the Commonwealth.

##### **a. The Unique Facts in the CNMI Require Something More Than a "One-Size-Fits-All" Federal Solution**

The Task Force recommendation to increase the minimum wage to the required level on the U.S. mainland is an arbitrary adjustment that ignores fundamental differences between the two jurisdictions. In the Commonwealth, guest workers receive

many employee benefits, such as housing, local transportation, food and medical care (and *not just insurance, but full medical care*), that their counterparts on the mainland do not receive. These benefits have been valued by our Department of Commerce as the effective equivalent of a minimum wage of \$4.68, a figure that is well in excess of the current minimum wage on the mainland (even including the recent increase passed by the House of Representatives, assuming it were ultimately to be enacted). There may well be other facts that dictate yet a different figure or varying figures, depending on the industry. A fundamental problem has been the absence of any thorough analysis of the composition of existing wage packages, the impact of increasing wages on the workers or on the viability of the principal labor-intensive industries in the CNMI, which are the very heart of its economy.

In certain non-mainland areas where there is federal jurisdiction over the minimum wage, Congress has recognized these differences and has relied on local industry committees when implementing minimum wages rather than an across the board approach. Significantly, this has been done only *after* a thorough review of the particular economy, local wage levels, economic conditions, employment data, trends, industry production costs and financial conditions. In fact, Congress has required that attention be given to "economic and competitive conditions" to be sure that employment in the industry "will not be substantially curtailed." 29 USC 208(b). In American Samoa, for example, there are 14 separate categories of businesses including the hotel, tour and travel service, construction, printing/publishing, hospital, wholesaling, and financial industries to name only a few. Each industry has a differing wage rate ranging from \$2.25 to \$3.50 per hour. See 29 CFR Part 697.

As explained in more detail below, the CNMI legislature has adopted a similar approach in the current law which recognizes industry differences within the CNMI. Moreover, completion of the comprehensive and independent study that is currently underway will provide for the first time the data and analysis that will permit a more rational resolution to this complex issue.

**b. The Elusive "Agreement" Between the CNMI and the Department of Interior**

One of the more troubling aspects of the current debate in Washington, D.C. with respect to the CNMI is the unexplained significance given to the minimum wage formulation reflected in Public Law 8-21. It is as if it constituted some kind of binding agreement between the CNMI and the Federal government against which all minimum wage formulations are to be measured. This CNMI law set up an automatic schedule of incremental, across-the-board, 30 cent increases in the minimum wage over a period of years until the federal minimum wage level was reached. Exempted from this public law were several categories of workers including farmers, fishermen and domestic household workers, the very workers which have been the subject of the most egregious of the alleged labor problems. Moreover, the law created a Wage and Salary Review Board, chaired by a garment industry representative, to review the differences

among industries. While this solution to the minimum wage problem reflected the particular political consensus at the time, it did not reflect a particularly rational or studied analysis of the impact of such an increase on the economy of the CNMI. In fact, to the extent that we can determine, there was *no* economic evaluation in setting these proposed wage levels.

Yet the Task Force Report elevates Public Law 8-21 to a new level, suggesting that any departure from it is somehow an inexcusable breach of an explicit contract. The Report, for example, states that the approach embodied in the current law (Public Law 10-13) "*voids the original intent* to systematically move the CNMI wage to the Federal level" (emphasis added). Yet the Report offers no explanation as to why Public Law 8-21 should constitute the "original intent" any more than the preceding statutory scheme or the current law (Public Law 10-13). Each is a legitimate statute in so far as it was achieved through the democratic process by the elected representatives of the CNMI at the time. Since Public Law 8-21 was enacted in 1993, there has been a new legislature and a new Governor in the CNMI, and a complete turnover in control of the U.S. Congress. For the 104th Congress to pass the legislation requested in the Task Force Report that would hold the current CNMI legislature and the Tenorio Administration to the policies of Public Law 8-21 as enacted by the previous CNMI legislature and the previous Governor fails to recognize the inherent dynamics of the democratic process. It is particularly troubling given the obvious shortcomings of Public Law 8-21 which failed to address household domestics, the group with the most significant allegations of abuse, or to study adequately the underlying conditions needed to determine the affect of a wage increase on the overall CNMI economy.

**c. The Current Approach to the Minimum Wage in the CNMI Provides a Rational Process for Reaching a Sound Solution**

After months of additional debate and discussion about the best way to implement changes in the minimum wage, the current legislature passed, and the Governor signed, legislation that is designed to reach a long-term solution to the problem of what to do with the minimum wage, as well as addressing some immediate problems. Specifically, this new law, Public Law 10 -13, increases the minimum wage by 30 cents across the board, effective July 1st in all industries (except the construction and garment industries which will phase in the same increase evenly over a two-year period).

Significantly, as demanded by the Tenorio Administration, the new law also includes domestic household workers and farmer workers and fishermen, all of whom were exempt under the previous law which the Department of Interior now finds so compelling. It mandates a very substantial 50% increase in the monthly minimum wage in these categories (from the current \$200 per month minimum to \$300 per month). In addition, the Department of Labor has proposed regulations imposing minimum household incomes before authority to employ a guest worker is granted. By



substantially increasing the minimum wage in this category, it is expected that the number of domestics will drop precipitously, and because they are largely foreign workers, they will leave the Commonwealth. Unlike hotel or garment workers, such a reduction in the work force of domestics will not have a direct debilitating effect on key industries.

The most important feature of the new approach, however, is the mechanism to actually study and understand the impact of these decisions. The Governor has contracted with the Hay Group, a world-recognized management and human resources consulting firm that will undertake the first comprehensive evaluation of the minimum wage situation in the CNMI since the Covenant was signed, nearly 21 years ago. Unlike the Wage and Salary Review Board, of which the Task Force was critical because of the presence of garment industry representatives, this approach is free from even the appearance of conflict of interest, and will produce a full-scale study with educated, realistic and *objective* recommendations based on credible information upon which decisions can then be based about the minimum wage. For the first time in our history, we will have an understanding of the impact our decisions will have on our economy. To date the debate has been characterized by emotional reactions, whim, and fear of what Washington might do to the CNMI unless changes are made. At last we will have a basis for making a rational, intelligent and responsible decision. All that we ask from you is to be allowed to complete the process.

The real question for your Committee is whether the *present* law in the CNMI is so devoid of rationality, or so offensive to Constitutional principles, that it justifies altering the balance reflected in the original Covenant that reserved minimum wage determinations to the CNMI. We do not think the record supports such intervention -- primarily because there is no record one way or the other -- on the merits of changing the minimum wage in the CNMI. It is our expectation that the Hay Group will provide the basis for just such a record.

**d. The Minimum Wage Should Not Be Manipulated to Solve Non-Wage Problems That Can Be Dealt With Directly**

Finally, no discussion of the minimum wage is complete without looking behind the initial rhetoric to the real reason the increase is being proposed by the Task Force Report. One need not look far. The Report's recommendations candidly cite what appear to be the real reasons for seeking the increase:

[t]here will be a favorable effect on related problems including illegal employer labor actions, strain on infrastructure, organized crime and illegal drugs. In our view, reducing the existing incentives to hire alien workers at lower wages than those prevailing for local workers should help slow uncontrolled immigration and perhaps help prevent the need for greater Federal control of immigration.

*Task Force Report at pp 8-9.*

If the real purpose in raising the minimum wage is to address these problems, why not deal with them individually and directly rather than jeopardize the economic viability of the CNMI? Illegal employer labor actions, organized crime, illegal drugs can all be dealt with by enforcing existing laws -- which incidentally, appears to be well underway judging by the Task Force Report's own conclusions about the increase in law enforcement efforts. Similarly, immigration problems can be dealt with directly through the LIIDS program and the local immigration laws, rather than jeopardizing the economic livelihood of the Commonwealth.

To approach these problems by shutting down the economy is to throw the baby out with the bath water. It is simply the wrong remedy for the perceived problems. It is as if the proposed solution to securities fraud were to close the stock exchange. It would surely eliminate the problem, but at what cost? The rational solution, of course, is to enforce the securities laws, or enact more stringent ones, if the current laws are not doing the job. Surely no one would shut off the source of investment capital to cure the occasional incident of securities fraud. Similarly Congress should not effectively drive fundamental businesses out of the CNMI, just so it can ease the burden of attacking possible criminal activity or violations of labor laws.

## **7. Prison and Detention Facilities**

The Task Force Report recommends that Congress direct the CNMI to utilize Covenant funds for prison and detention facilities. This issue, and the recommendations of the Task Force, were clearly identified to Governor Tenorio in a letter from the Director of the Office of Insular Affairs. We too have recognized that as our law enforcement efforts become more productive, our prison facilities will need to be improved. And we agree with the goals outlined by the Task Force Report and are ready to work with the federal officials in developing adequate prison and detention facilities. However, we must object to the proposal that this recommendation be *legislated by Congress*. We can make this decision and meet these needs in cooperation with federal authorities without new legislation. That is simply not needed, nor warranted.

We are also concerned about the directive that Covenant funds be used for this purpose. While we may conclude that they should be used, they are not the only source. We have been actively searching for alternatives and have identified the Violent Offender Incarceration and the Truth in Sentencing Incentive Grant programs as potential sources. These programs could provide the bulk of the funds required to construct the recommended 200 bed facility and we would propose in that case to use a portion of our Covenant funds to meet the matching fund requirements of these and other grant programs.

Additionally, we will continue our work with the National Institute of Corrections (DOJ) to address operational and management concerns. The CNMI understands that the construction of a new facility is only half of the equation. The promulgation and implementation of standards in training, inmate management, and other areas are needed to complete the task.

#### **8. Inspector General Report on Management of Public Lands**

Finally, you have requested our comments on the report of the Department of Interior's Inspector General with respect to the management of public lands in the CNMI. Let me begin by pointing out an underlying misassumption with the entire report. One stated objective in carrying out the report was to determine whether the Commonwealth was effective in "controlling and utilizing U.S. Government land transferred to the Commonwealth". The problem, of course, is that these lands were not U.S. Government lands. They were controlled by the Japanese Government and Japanese nationals prior to June 1944. Following the Second World War they were managed by the Trust Territory Government, which was created by the United Nations. While it is true that the U.S. Government administered the Trust Territory Government until creation of the Commonwealth, the Trust Territory Government was not a part of the U.S. Government, and the public lands were not U.S. Government lands. They have always belonged to the people of the Northern Mariana Islands first in trust and now directly.

With respect to the particular recommendations of the IG Report, the Commonwealth is well underway in its implementation of new procedures. For example, new land exchange regulations became effective last month that require land exchanges to be based on appraisals of fair market value. With respect to the management of leases, the Division of Public Lands has had an informal policy of renting public lands at 8% of the value of the land. This has intentionally been a flexible policy, however, since there may be educational, cultural, economic or other benefits to the Commonwealth in addition to the actual rent being paid which are important to consider. We have also assigned additional attorneys to assist in the collection of lease payments and recovery of lands improperly taken. We have hired a new manager of the Account Compliance Section who is experienced in both business and computer technology. We have also hired a new Land Enforcement Manager who is working to improve on-site inspections of lessors and permittees. Finally, with respect to homestead administration, we have hired a new Homestead Manager who has instituted new policies for the review of homestead applications to ensure eligibility and need.

Governor Tenorio has responded in detail to the IG Report and I am including for the record a copy of that response.

## 9. Conclusion

America was founded on the spirit of self-reliance and the concept of individual responsibility for solving local problems with local solutions. Having accepted responsibility for correcting the situation the Tenorio Administration inherited, permit us, as contemplated by the Covenant and as is part of the political heritage which the people of the Commonwealth have adopted as their own, to also retain continued responsibility for its solution.

There is much talk in the halls of government about authority and responsibility. Authority is the power to say yes. Responsibility is the wisdom to say no when one has the power to say yes.

The Congress clearly has the authority to say yes to the legislative proposals before it. In the name of the good people of the CNMI, however, I ask that you show the wisdom to say no to an unwarranted federal intrusion in the political decision-making of the Commonwealth as we continue to implement local solutions to local problems.

I want to thank you, Mr. Chairman, and the Committee for this opportunity to appear before you. I would be happy to answer any questions or to provide any additional information for the record.

Thank you.

PREPARED STATEMENT OF SAMUEL F. MCPHETRES

MR CHAIRMAN, DISTINGUISHED MEMBERS OF THIS COMMITTEE AND REPRESENTATIVES OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS. IT IS A DISTINCT HONOR TO BE HERE TODAY FOR A VARIETY OF REASONS. MANY YEARS AGO I WORKED FOR ALASKA SENATOR BOB BARTLETT SHORTLY AFTER WE ACHIEVED STATEHOOD IN ALASKA. I ALSO TAUGHT HIGH SCHOOL HERE AT CARDOZO HIGH FOR A COUPLE OF YEARS A LONG TIME AGO.

IT IS ALSO SIGNIFICANT FOR ME TO BE HERE BECAUSE I WAS PRESENT AT THE NEGOTIATIONS LEADING TO COMMONWEALTH FOR THE NORTHERN MARIANA ISLANDS AND ALL SUBSEQUENT HISTORICAL EVENTS FOLLOWING.

AS CURRENT PRESIDENT OF THE SAIPAN CHAMBER OF COMMERCE I TAKE PARTICULAR PRIDE IN REPRESENTING A VIBRANT AND VERY ACTIVE PRIVATE SECTOR IN THE NEWEST AMERICAN TERRITORY.

MR CHAIRMAN, WE WERE ASKED TO COMMENT ON SEVERAL VERY IMPORTANT ISSUES FACING THE COMMONWEALTH AT THIS TIME. I WILL TOUCH ON EACH OF THEM BRIEFLY AND WILL WELCOME QUESTIONS OR CLARIFICATIONS SHOULD THERE BE ANY.

**MINIMUM WAGE**

FIRST, ON THE QUESTION OF MINIMUM WAGE, LET ME MAKE IT ABUNDANTLY CLEAR THAT THE SAIPAN CHAMBER HAS CONSISTENTLY SUPPORTED PUBLIC LAW 8-21 WHICH MANDATED THE ANNUAL \$.30/HR. WAGE INCREASE ACROSS THE BOARD. WE WERE, IN FACT, PARTICIPANTS IN THE DRAFTING OF THAT LEGISLATION. WE MAINTAIN THAT POSITION TODAY. WE DO FEEL, HOWEVER, THAT IT IS IMPORTANT FOR THIS COMMITTEE TO UNDERSTAND THAT IN THE CNMI THE QUESTION OF MINIMUM WAGE IS NOT SIMPLY ONE OF WAGES. IN THE FIRST PLACE, THE PRIVATE SECTOR IS MADE UP LARGELY OF CONTRACT WORKERS FROM OUTSIDE. LOCAL LAW REQUIRES THAT THE EMPLOYERS

PROVIDE TRANSPORTATION TO AND FROM WORK, ROOM AND BOARD, MEDICAL CARE AND REPATRIATION COSTS. THE VALUE OF THESE MANDATED BENEFITS VARIES FROM \$1.50 TO \$2.00/HOUR. ADDED TO THE CURRENT MINIMUM WAGE OF \$2.75HR, THE WAGES PAID IN REAL VALUE ACTUALLY EXCEED THE FEDERAL MINIMUM WAGE. IT IS THE POSITION OF THE SAIPAN CHAMBER OF COMMERCE THAT AS THE LEGAL MINIMUM WAGE RISES THE MANDATED BENEFITS MUST BE REDUCED COMMENSURATELY. BUT THIS IS A LOCAL LEGISLATIVE MATTER WHICH WE MUST DEAL WITH. ANY DISCUSSION OF MINIMUM WAGE IN THE COMMONWEALTH, MR CHAIRMAN, MUST INCORPORATE THIS VERY IMPORTANT FACTOR. FOR THE MOST PART, THE REAL MINIMUM WAGE IN THE CNMI MEETS OR EXCEEDS THE FEDERAL MINIMUM WAGE. I WOULD NOTE IN PASSING THAT VERY FEW US CITIZENS ARE MINIMUM WAGE EMPLOYEES AT ALL, CERTAINLY NONE WORKING FOR THE CNMI GOVERNMENT. I WOULD CONCLUDE BY SAYING THAT WE HOPE THAT THE FEDERAL GOVERNMENT WILL ALLOW US TO WORK THIS OUT INTERNALLY. TO FEDERALIZE THE MINIMUM WAGE WITHOUT DEALING WITH THE LOCALLY MANDATED BENEFITS WOULD WREAK HAVOC WITH THE LOCAL ECONOMY.

WE ALSO APPLAUD THE GOVERNOR'S ACTION IN CONTRACTING WITH THE HAY GROUP TO DO A SERIOUS AND PROFESSIONAL STUDY OF THE MINIMUM WAGE ISSUE THROUGHOUT THE COMMONWEALTH SYSTEM, BOTH PRIVATE AND PUBLIC SECTORS.

#### **IMMIGRATION**

ON THE ISSUE OF FAIR TREATMENT OF NON-RESIDENT WORKERS THE SAIPAN CHAMBER OF COMMERCE WISHES TO ASSURE THE COMMITTEE THAT IT STANDS SQUARELY AGAINST LABOR ABUSE IN ANY FORM. OUR CODE OF ETHICS MANDATES EXPULSION FOR ANY PROVEN ABUSIVE BEHAVIOR. NO CURRENT

MEMBER IN THE PAST FIVE OR SO YEARS HAS BEEN FOUND IN VIOLATION OF ANY APPLICABLE STATUTE. IN ADDITION, THE CHAMBER MAKES IT A POINT TO SPONSOR WORKSHOPS AND SEMINARS FOR MEMBERS AND THE GENERAL PUBLIC ON LABOR ISSUES. WE HAVE HAD THE U.S. DEPARTMENT OF LABOR, THE CNMI DEPT. OF IMMIGRATION AND LABOR, NLRB AND OTHERS AT VARIOUS TIMES OVER THE PAST YEAR, FOR EXAMPLE PRESENT THEIR PROGRAMS TO THE PUBLIC.

THAT SAID, THERE IS NO QUESTION THAT THERE EXISTS A SERIOUS PROBLEM. SOMETIMES THAT PROBLEM EXISTS MORE IN PERCEPTIONS THAN FACT, BUT NONETHELESS IT IS THERE. PART OF THE PROBLEM IS BASED ON SHEER NUMBERS. WITH TWO THIRDS OF THE POPULULATION NON-RESIDENTS, MANY OF THEM EMPLOYERS IN THEIR OWN RIGHT, THERE IS FREQUENTLY A BREAKDOWN IN COMMUNICATION AND UNDERSTANDING OF WHAT THE LAW IS. WE ARE CONSTANTLY WORKING TO EDUCATE OUR MEMBERS AND TO SET EXAMPLES FOR THE REST OF THE COMMUNITY. WE ARE ALSO READY TO WORK WITH LOCAL AND FEDERAL AGENCIES IN DEALING WITH THE PROBLEMS. I WOULD SAY, MR CHAIRMAN,, THAT THERE HAVE BEEN MANY MANY IMPROVEMENTS OVER THE PAST SEVERAL YEARS AND COMPARED TO HOW THINGS WERE FIVE YEARS AGO, WE ARE FINDING FEWER INSTANCES OF ABUSE. A SIGNIFICANT REASON FOR THIS IS THE ACTIVE PARTICIPATION OF THE FAIR LABOR STANDARDS ADMINISTRATION AND OSHA OVER THE PAST COUPLE OF YEARS.

WE WOULD LIKE TO CONCLUDE THIS SECTION BY NOTING THAT THE CHAMBER IS ACTIVELY SEEKING MORE AMERICAN BASED INVESTMENT THAT IS NOT LABOR INTENSIVE. AT THE PRESENT TIME WE HAVE TWO MAJOR INDUSTRIES THAT FORM THE BACKBONE OF OUR ECONOMY: TOURISM AND THE GARMENT INDUSTRY. WHILE THE GARMENT INDUSTRY IS NOW STATIC AT ABOUT 7,000

EMPLOYEES, THE TOURISM INDUSTRY IS EXPANDING RAPIDLY. NEW HOTELS AND POSSIBLY A CASINO OR TWO ON THE ISLAND OF TINIAN WILL REQUIRE EVEN MORE WORKERS WHICH WILL HAVE TO COME FROM OUTSIDE. WE WELCOME THIS SIGN OF A HEALTHY GROWTH, BUT WE BELIEVE THERE NEEDS TO BE SOME DIVERSIFICATION INTO AREAS WHICH DO NOT REQUIRE INTENSIVE LABOR INVESTMENTS. THE LOCATION OF THE COMMONWEALTH SHOULD BE AN INCENTIVE TO AMERICAN COMPANIES DOING BUSINESS IN ASIA, FOR EXAMPLE.

#### LAW ENFORCEMENT

WE APPLAUD THE EFFORTS OF GOVERNOR TENORIO TO SECURE AN INCREASED PRESENCE OF FEDERAL LAW ENFORCEMENT AGENCIES IN THE COMMONWEALTH. THERE IS NO QUESTION BUT THAT THERE IS A REAL NEED FOR SKILLED ASSISTANCE IN THIS AREA. WE HAVE, IN FACT, TAKEN THE INITIATIVE TO PROVIDE FORA FOR THESE AGENCIES TO EDUCATE THE PUBLIC ON THEIR RESPONSIBILITIES. WE HAVE ALREADY HAD A SEMINAR ON FISCAL FRAUD AND COUNTERFEITING WITH THE SECRET SERVICE AGENT BASED IN THE REGION AND WE WILL CONTINUE DO DO SO.

I WILL NOTE THAT THE LOCAL DEPT. OF PUBLIC SAFETY IS FACED WITH A HERCULEAN TASK GIVEN THE FACT THAT MUCH OF THE SERIOUS CRIMINAL ACTIVITY IS CONCENTRATED WITHIN VARIOUS ETHNIC AND NATIONAL GROUPS AND THAT THESE ARE VERY DIFFICULT TO PENETRATE. THERE HAS BEEN PROGRESS, HOWEVER AND DPS IS TO BE CONGRATULATED. I NOTE IN PASSING THAT A SPECIAL LOCAL/FEDERAL TASK FORCE HAS BEEN ESTABLISHED TO GUARANTEE COOPERATIVE EFFORTS IN THIS AREA.

THE BUSINESS CLIMATE IS DIRECTLY AFFECTED BY THE SECURITY AND WELL-BEING OF THE COMMUNITY. THIS HAS BEEN A FACTOR IN SOME POTENTIAL



INVESTORS DECIDING NOT TO COME TO THE COMMONWEALTH AFTER READING THE HEADLINES FOLLOWING SOME PARTICULARLY NOTABLE CRIMINAL ACTIVITY. I CAN ASSURE THIS COMMITTEE THAT WE WILL CONTINUE TO COOPERATE FULLY WITH FEDERAL LAW ENFORCEMENT AGENCIES.

#### **FEDERAL/COMMONWEALTH RELATIONS**

MR CHAIRMAN, I VENTURE INTO THE DELICATE AREA OF FEDERAL/COMMONWEALTH RELATIONS WITH A CERTAIN TREPIDATION. I DO BELIEVE, HOWEVER, THAT IT IS IMPORTANT TO POINT OUT THAT WHILE WE DO HAVE PROBLEMS OF LOCAL ORIGIN, THERE ARE OTHERS WHICH HAVE BEEN CREATED THROUGH A MISINTERPRETATION OF THE COMMONWEALTH COVENANT OR THE MISUNDERSTANDING OF COMMONWEALTH HISTORY. I WOULD LIKE TO POINT OUT TWO SPECIFIC EXAMPLES WHERE FEDERAL ACTIVITIES HAVE CONTRIBUTED OR ARE ABOUT TO CONTRIBUTE TO OUR PROBLEMS IN THIS AREA.

THE FIRST RELATES TO A RECENT AUDIT OF THE DISPOSITION OF COMMONWEALTH PUBLIC LAND BY THE INSPECTOR GENERAL. IT WAS STATED IN THE MEDIA THAT THE AUTHORITY TO AUDIT THIS PURELY INTERNAL ISSUE WAS BASED ON THE FACT THAT "THE PUBLIC LAND IN THE COMMONWEALTH HAD BEEN OWNED BY THE UNITED STATES" BEFORE IT WAS TURNED OVER TO THE CNMI. IN FACT ALL TRUST TERRITORY PUBLIC LAND WAS RETURNED TO THE TRUST TERRITORY DISTRICTS IN WHICH IT WAS LOCATED IN 1976, I BELIEVE. NO LAND IN THE TRUST TERRITORY WAS OWNED BY THE UNITED STATES UNDER THE TRUSTEESHIP. WHILE I DO NOT ALWAYS AGREE WITH OUR GOOD GOVERNOR ON HOW THESE LANDS ARE HANDLED, I DO NOT, HOWEVER, SEE ANY FEDERAL INTEREST IN THIS AREA. IF THE MEDIA REPORT WAS ACCURATE, THIS KIND OF MISINTERPRETATION OF HISTORY HAS LARGER

## IMPLICATIONS.

THE SECOND AREA OF GREAT CONCERN THE SAIPAN BUSINESS COMMUNITY, MR CHAIRMAN, IS THE APPARENT INTENT OF THE NATIONAL LABOR RELATIONS BOARD TO APPLY ITS REGULATIONS IN THE CNMI WITHOUT CONSIDERATION OF LOCAL LAW. IN PARTICULAR I HAVE RECENTLY BEEN INFORMED THAT THERE IS A POLICY COMING DOWN THE PIPELINE WHICH WOULD PREVENT AN EMPLOYER FROM NOT RENEWING AN EXPIRED NON-RESIDENT WORKER'S CONTRACT TO BE REPLACED BY A LOCAL HIRE. IT HAS BEEN THE CNMI LAW FOR YEARS NOW THAT ANY U.S. CITIZEN HAS PRIORITY OVER AN IMPORTED WORKER. AS IT WAS EXPLAINED TO ME , UNDER THE NEW POLICY FROM THE NLRB THE EMPLOYER WILL BE REQUIRED TO RENEW THE NON-RESIDENT WORKER UNLESS THERE IS CAUSE FOR DISMISSAL, EVEN IF A LOCAL HIRE INDIVIDUAL IS AVAILABLE AND APPLYING. THE NEGATIVE REPUTATION OF THE COMMONWEALTH IN THE LABOR AREA NOTWITHSTANDING, THE FACT IS THAT MANY GUEST WORKERS IN THE CNMI ARE VERY RELUCTANT TO RETURN TO THEIR COUNTRIES ORIGIN. THIS IS, FOR EXAMPLE, THE MAIN REASON FOR THE ESTIMATED THOUSANDS OF OVERSTAYERS IN THE ISLANDS AND LABOR ABUSE CASES FILED JUST PRIOR TO THE EXPIRATION OF CONTRACTS. BUT TO TAKE AWAY THE EMPLOYER'S RIGHT TO CHOOSE HIS EMPLOYEES AND TO FORCE HIM TO GIVE PREFERENCE TO NON-US CITIZENS OVER US CITIZENS DOESN'T SEEM RIGHT. AND IT GOES AGAINST THE LOCAL LAW GIVING U.S.CITIZENS PRIORITY. IF, OF COURSE, THERE HAS BEEN SOME ABUSE OF THE CONTRACT WORKER PROVEN, THEN THAT IS ANOTHER STORY.

MR CHAIRMAN, IN CONCLUSION LET ME STATE THAT THE SAIPAN CHAMBER OF COMMERCE IS FULLY BEHIND THE MINIMUM WAGE ISSUE AS I DESCRIBED ABOVE. LET ME REPEAT THAT IT CANNOT BE SERIOUSLY DISCUSSED WITHOUT CONSIDERATION OF THE MANDATED BENEFITS. WE WELCOME FEDERAL LAW

ENFORCEMENT AND THE TECHNICAL ASSISTANCE GIVEN TO OUR IMMIGRATION AND LABOR OFFICIALS. WE ARE WORKING AT DIVERSIFICATION AND, HOPEFULLY, THE AMERICANIZATION OF OUR ECONOMY. I MIGHT NOTE IN PASSING THAT WE HAVE HAD SOME VERY FRUITFUL DISCUSSIONS WITH SEVERAL EUROPEAN AND ASIAN DIPLOMATS TOURING THE REGION AND HOPE TO SEE SOME RESULTS IN THE FUTURE.

WE HOPE THAT THE CONGRESS AND THE ADMINISTRATION WILL CONTINUE TO MONITOR OUR PROGRESS AND SET RESPONSIBLE GUIDELINES WHICH ARE CONSISTENT WITH THE PRINCIPLES OF SELF GOVERNMENT AS EMBODIED IN THE COVENANT AND THE CNMI CONSTITUTION. WE HAVE ALSO TAKEN THE INITIATIVE TO DISTRIBUTE THE INTERIOR REPORT ON THESE ISSUES TO OUR BOARD MEMBERS. WHILE WE AGREE WITH A LARGE MAJORITY OF THE OBSERVATIONS, WE BELIEVE THAT MORE CAN BE DONE BY WORKING COOPERATIVELY THAN OTHERWISE. WE DO HAVE A LOT OF WORK TO DO, BUT THERE HAS BEEN CONSIDERABLE PROGRESS AS WELL.

THANK YOU VERY MUCH, MR. CHAIRMAN.

Samuel F. McPhetres  
President and Chairman of the  
Saipan Chamber of Commerce  
P.O. Box 803  
Saipan, MP 96950

Tel: (670) 233-7150  
Fax: (670) 233-7151

Business:  
Samuel F. McPhetres, Consulting  
P.O. Box 5324  
Saipan, MP 96950

Tel: (670) 233-8666  
Fax: (670) 234-8381

Email: [samuel.f.mcphetres@saipan.com](mailto:samuel.f.mcphetres@saipan.com)

Synopsis: The Saipan Chamber of Commerce (SCC) supports the increase in minimum wages as long as the mandated employee benefits are adjusted accordingly.

The SCC is concerned about the increasing non-resident population and the concomittant social problems that have developed. The organization supports the technical and logistical support from federal agencies to local agencies but does not support a federal take-over.

The SCC appreciates the presence of federal law enforcement agencies in the Commonwealth and promises to continue the full cooperation of the business community.

The SCC is not in favor of any federal takeover of minimum wage or immigration but continues to urge cooperative efforts by the federal and Commonwealth authorities to resolve problems under the aegis of the Covenant and the CNMI Constitution.

FEDERAL - CNMI INITIATIVE

ON

LABOR, IMMIGRATION, & LAW ENFORCEMENT

SECOND ANNUAL REPORT

June 1996

## Table of Contents

## Executive Summary

- I. Background
  - II. Findings
    - A. Areas of Progress
    - B. Areas of Concern
      - Immigration
      - Minimum wage
      - Prison Facilities
      - Shadow Contracts and Letters of Invitation
      - Costs
  - III. Recommendations
    - A. Minimum Wage
    - B. Prison
  - IV. Initiative Agenda
    - A. Immigration options
    - B. CNMI-INS Coordination
    - C. Shadow Contracts
    - D. Non-payment of wages/costs
    - E. Interior Inspector General
    - F. Prostitution
    - G. Prison/Detention Facilities
    - H. International Issues
- Appendices:
- Appendix A -- Summary of Initiative Activities and Plans
  - Appendix B -- Attached Agency Reports
  - Appendix C -- Attached Census Data
  - Appendix D -- CNMI Support for Minimum Wage Increase

## EXECUTIVE SUMMARY

The combined efforts of the Government of the Commonwealth of the Northern Mariana Islands (CNMI) and the Federal agencies are making progress in fulfilling the goals of the Federal-CNMI Initiative on Labor, Immigration, and Law Enforcement. Governor Tenorio has strongly endorsed the CNMI's actions and the increase of Federal law enforcement presence. The Federal agencies and the CNMI are working cooperatively, with the Office of Insular Affairs acting as an ombudsman, to address the problems of responding to the consequences of enormous growth in the CNMI. However, sustained follow-through from both the local and Federal governments is needed if Initiative goals are to be met.

The Federal agencies participating in the Initiative recommend the following:

- (1) **Recommend that the Congress finalize enactment of section 2 of S. 638 to establish in Federal law the annual 30-cent increases in the minimum wage contained in existing CNMI law.**
- (2) **Recommend that the Congress direct the CNMI to utilize Covenant funds for prison and detention facilities.**

With regard to the imposition of immigration controls, it should be noted that the Immigration and Nationality Act (INA) may not entirely address the immigration problems in the CNMI. Full application of the INA could have unintended consequences for the CNMI. Effective immigration control may require legislation on immigration specific to the CNMI at either the local or Federal level. Should the CNMI not establish more effective control of immigration within a year, the Federal agencies participating in the Initiative will develop options to increase the Federal role in local immigration as is necessary to establish immigration control. These options must give consideration to self-government in the CNMI and local economic development needs.

## I. BACKGROUND

The Initiative was funded with a \$7 million appropriation by the Congress in Public Law 103-332 for fiscal years 1995 and 1996. Of this amount, \$4 million was allocated by the Department of the Interior for Federal agency action and \$3 million for CNMI action. The latter included \$1.5 million for a computer system to track alien workers in the CNMI. The Congress endorsed the Initiative due to allegations of maltreatment of alien workers in the CNMI. Such allegations included the non-payment or late payment of wages, excessive work hours, poor working and living conditions, involuntary servitude, forced prostitution, rape, beatings, intimidation, racial discrimination, and other allegations of labor and civil rights violations by private employers, recruiting agencies, and local officials under color of law.

Also of concern to the Congress was the effect that the large alien population increase has had on the social, economic, and political institutions of the CNMI. This increase resulted from large number of alien workers, from tourists, and from workers overstaying the periods of their visas and work permits, and from the inability of local officials to track and deport overstaying tourists and alien workers. The local immigration and labor systems have been characterized by meritorious and frivolous labor complaints, fraudulent employment credentials, and the preferential hiring of low-paid alien workers over resident workers. Finally, this population increase was associated with increased drug trafficking, white collar crime and government corruption, a strain on local government services and infrastructure, and a concern about the future political impact of children of alien workers born in the CNMI who, by birth, are United States citizens.

During the past year, Federal agencies have met on numerous occasions to coordinate planning and action, both in Washington, D.C. and Saipan. A field task force of federal agencies, co-chaired by the Office of Insular Affairs Representative in Saipan and the United States Attorney for Guam and Saipan, has been formed in Saipan and meets monthly to discuss progress and to develop plans for the Initiative. Members of the Federal interagency working group have also traveled to the CNMI from Washington, D.C., from regional offices on the mainland and Honolulu, and from Guam where they have met with Federal field officials. Chairman Frank Murkowski, Senator Daniel Akaka, and staff from the Senate committee on Energy and Natural Resources traveled to the CNMI in February 1996 to meet with Federal agency representatives, local government officials, and the business community to gain first-hand knowledge about these issues. In April 1996, the CNMI government financed a visit by eight House staff members to the CNMI.



## II. FINDINGS

### A. AREAS OF PROGRESS

- o CNMI Governor Froilan Tenorio has supported increased budgets and staffing for the CNMI Attorney General's office, the CNMI Department of Labor and Immigration, and work on the computer tracking system for alien workers in order to improve local labor, immigration, and law enforcement capabilities. In addition, the Governor has called for a greater Federal law enforcement presence in the CNMI and has supported local cooperation with Federal law enforcement agencies.
- o The Initiative has brought increased Federal resources and staff to the CNMI to enforce Federal law. Full-time Federal staffing in the CNMI increased by eight (six two-year assignments, two temporary duty assignments). Federal agencies are also providing training to local agency personnel. Caseloads for the Federal District Court, the United States Attorney, the Department of Labor, the National Labor Relations Board, and law enforcement agencies have all risen dramatically.

**Federal District Court:** For the two full calendar years of 1994 and 1995, there were 25 criminal cases on the U.S. District Court docket in the CNMI. With the increased law enforcement stemming from the Initiative, there have been 20 criminal cases brought in first three months of 1996, a four-fold increase.

**United States Attorney:** In the fiscal year 1995, the United States Attorney's Office filed 14 criminal cases against 19 defendants, and opened a total of 22 investigations. In the first five months of fiscal year 1996, the Office has filed 12 criminal cases against 22 defendants and has opened 21 investigations. On the civil side, in the first five months of fiscal year 1995, the Office filed or answered in ten cases and received 11 matters. In the first five months of fiscal year 1996, the Office has answered or filed 3 civil cases and has received 15 matters.

**U.S. Marshals Service Incarcerations:** For the twelve-month period ending March 31, 1995, the Marshals Service handled 14 incarcerations. For the past year's identical period, ending in March 1996, the figure almost doubled to 25.

**National Labor Relations Board:** Approximately 60 unfair labor practice charges and seven representation petitions have been filed with the NLRB Honolulu Regional Office in fiscal year 1995. 42 new cases are under investigation in fiscal year 1996.

**Department of Labor:** In 1994, the Department of Labor's Wage and Hour Division, operating from a one-person office in Guam, investigated 10 firms. The collective back wage amount found due to employees was \$1,232,951. During the period April 1995 through March 1996, with two investigators in Saipan, 21 firms were investigated and found to owe employees over \$1,693,000 in unpaid wages..

**B. AREAS OF CONCERN**

**o The CNMI Government has had difficulty in controlling immigration.**

While progress is being made in developing the necessary institutional capability, there continues to be inadequate enforcement of immigration laws and regulations. For example, several moratoria on the importation of alien workers have come and gone, with no impact. Records on the number of alien worker permits are of little help in tracking alien workers because information is lacking on when or whether workers leave the CNMI.

The prototype of the new computerized alien tracking system that would aid enforcement is continuing to progress. During prototype development to date, 23,010 alien records have been entered into the database. CNMI estimates that by July 1996 that the total may reach 27,000. This information is being stored in the database to be used for issuance of alien worker identification (ID) cards and to support queries for ID and status information. The prototype became operational at the end of May 1996.

In parallel with implementation of the prototype is the CNMI Project Team's planning and development of the full operational Labor and Immigration support system. That development is to be supported by the Department of the Interior (DOI) and by the Immigration and Naturalization Service (INS), in the form of Independent Validation and Verification (IV&V) process. Critical to initiation of development is publication of a comprehensive Project Plan, to be reviewed and accepted by all parties. That plan has been expected since early April and, while INS and DOI have commented on a draft plan, there is concern that the plan is not yet complete.

Based on CNMI projected completion, it is expected that by the mid-1997 the computerized alien tracking system will have progressed from prototype into a fully implemented operational system, for labor and immigration status determination and for entry and exit control purposes. In the meanwhile, census data are the best means of tracking the number of aliens present in the CNMI.

Preliminary figures from the 1995 CNMI census show a total population of 59,913 people, up 38 percent from 1990. Of these, the American-citizen population is 27,512 (46 percent) and the alien population is 32,401 (54 percent). The percentage of the

population born in the CNMI stayed nearly constant at about 38 percent from 1990 to 1995, after decreasing from 72 percent in 1980.

The census data show that the dramatic change in ethnic composition of the CNMI continues, both through immigration and through births to aliens. Most of the U.S. citizens born in the CNMI since 1990 have been born to non-native mothers and for the last few years, most have been born to Asian mothers. The population pyramid shows concentrations in the working-age group (twenty to forty), and in children under five. The twenty-to-forty concentration is a result of immigration. The under-five concentration is made up of persons almost entirely born in the CNMI.

Already twenty-five percent of the CNMI school population of 8,880 students are children of aliens. Virtually the entire increase in these children of aliens has occurred within the last decade, with most of the increase in the last five years. Based on the under-five population, geometric increases in this student population can be expected in the next decade.

Little is known about the numbers of illegal aliens in the CNMI. Although most aliens arrive legally, a number fail to leave after their contracts or tourist visas expire. Since good records are not kept on alien workers and the census does not identify illegal aliens, only a rough guess exists. The CNMI Central Statistics Division of the Department of Commerce estimates the number illegal aliens in the CNMI to be approximately 2,300. Federal sources believe that the number of illegal aliens could be substantially higher. The rate of actual deportations, as opposed to ordered deportations, is approximately 100-200 per year and is almost certainly not keeping up with the rate of increase in the illegal population residing in the CNMI.

The presence of "temporary" alien workers and their progeny have already altered the composition of the population in dramatic ways. It is ironic that local control of immigration was insisted upon by the CNMI Covenant negotiators in order to prevent an inundation by immigrants with a resulting loss of native Chamorro and Carolinian culture and influence. Yet, local control has had exactly the opposite of the intended effect. The reason is simple enough: instead of carrying out a clear policy based on public understanding and assent, the CNMI government has acquiesced to the desires of those who can make the most profit from bringing in alien workers. The same interests have been able to prevent the government from charging employers the full cost of infrastructure and services needed by alien workers, and have impeded efforts to increase the minimum wage.

o **CNMI Minimum Wage Policy is one of vacillation.**

No issue has become more contentious nor is more misunderstood than the issue of raising the minimum wage in the CNMI. The public and most business sectors realized

that a long-overdue gradual increase in the minimum wage to the level in effect on the mainland and in most territories, including Guam, would stimulate the economy, increase local revenue, and provide better paying private sector job opportunities for local workers, particularly the young, entry-level, wage earner. As a result, the legislature passed and the previous Governor signed a law raising the minimum wage in 30-cent annual increments to reach the current mainland level by the year 2000.

However, the CNMI Legislature in mid-December 1995 voted a six-month delay in implementing the scheduled January 1, 1996, 30-cent increment in the existing CNMI minimum wage law. Included in the legislation was the establishment of a Wage and Salary Review Board, chaired by the personnel director of a company that owns a number of garment factories that import several thousand alien workers. The wage board and the garment industry have issued statements about marginal costs, international competition, and employment levels. Economists opposing minimum wages have been cited and requests been made for further study of wages and incomes to be based on upcoming, but yet-to-be published census data. The Governor's eleventh-hour veto of the delay was over-ridden by the CNMI legislature just before the January 1 deadline. Six weeks later, the governor proposed reinstating the 30-cent minimum wage increase on April 1, 1996. The CNMI House of Representatives concurred, but the Senate did not. In April 1996, the Governor changed his mind and opposed the increase before July 1. In May 1996, the CNMI Legislature voted to roll the 30-cent increase back to 15 cents for garment and construction workers, leaving in place a one-time 30-cent increase for all other workers. The real consequence of this new CNMI legislation is the elimination of all automatic annual minimum wage increases. This voids the original intent to systematically move the CNMI wage to the Federal level.

This vacillation on the CNMI's own minimum wage law occurs against the backdrop of thriving and competing economies in Hawaii and Guam which for decades have paid the United States minimum wage or more. A resolution of the Hawaii legislature, in late March, strongly censured the CNMI on its backsliding minimum wage policies. All three economies are heavily dependent on Japanese tourism. The CNMI Chamber of Commerce, Contractors Association, and Hotel Association have each formally expressed support for the annual incremental increases in the minimum wage as was established in CNMI public law 8-21. They continue to argue that the increases are reasonable and that the law provides needed long-term stability in wage policy.

While most CNMI businesses support an increase in the minimum wage, the policy is strongly influenced by the single industry that opposes it -- the garment industry. Those suggesting garment companies must compete with low wages in other Asian countries, ignore the facts that they are exempt from United States duties and quotas, and that they also compete directly with other United States businesses paying United States wages to United States citizens and residents subject to United States immigration control.

The CNMI garment industry has portrayed itself as a declining industry on the verge of extinction in the face of rising wage costs. In fact, the CNMI has increased garment shipments in every year since the industry's inception in 1984 and is now expanding production at an increasing rate. Garment imports from the CNMI increased in value from \$300.6 million in 1993 to \$329 million in 1994 (up 9 percent), to \$425.9 million in 1995 (up an additional 30.4 percent), and were up another 40.7 percent in the first two months of 1996 over the same period last year. On top of this increase, the local administration has approved expansion of the industry with another 11 garment factory licenses.

The influence of the garment industry is distorting CNMI immigration, labor, and economic policy. The clear need is not for the industry to better compete, but for it to turn garment industry profits to the benefit of the entire CNMI community through better wages paid to potential local hires and greater contribution to the costs associated with importing alien workers.

Enforcement of wage and hour laws is thwarted by numerous companies in the CNMI that are thinly capitalized. Some CNMI companies hire foreign workers, short their pay for as long as they can, and if caught, file for bankruptcy. The foreign worker is often never fully paid.

**o Shadow contracts and letters of invitation are issues that need a solution.**

The U.S. Department of Labor's Wage and Hour Division has resolved enforcement cases and obtained judgements against employers violating overtime laws. A Wage Hour Investigation found one firm with several garment manufacturing establishments obtained kickbacks of back wages previously paid to employees. We also understand that shadow contracts may exist under which alien minimum wage workers are required to pay kickbacks to persons in their home countries from their earnings for recruiting, transportation costs and other fees. Such shadow contracts would likely violate United States labor laws if they existed in the United States. Direct enforcement, in other countries, against parties to such contracts is extremely difficult.

The local government has issued numerous letters of invitation to prospective investors to conduct business in the CNMI. These letters are used to support applications for exit visas in countries such as China. Many recipients of such letters enter the CNMI with limited business prospects and little capital. We are concerned with recent news accounts that attribute an increase in organized crime to those who entered the CNMI on these letters of invitation. While the CNMI asserts that the issuance of these letters has ceased, there are reports that they continue to be available, and foreign nationals continue to enter via these letters.

o **Prison and detention facility construction must be a priority.**

In appropriating funds for the Initiative, the Congress cited the need for adequate prison and detention facilities as one of the goals of the Initiative. While preliminary analysis indicates a need for a 200-bed facility, no firm steps have been taken by the CNMI to meet this need. We believe it is time to move on the prison issue. We have written the Governor, asking to work together to address this pressing need.

o **The importation of alien workers is accompanied by significant societal cost.**

Many activities of the CNMI and Federal governments are forced to address the presence of alien workers in the CNMI: not all health care services for alien workers are covered by insurance; police and court services for alien workers go unreimbursed; and electricity, water, and sewer costs are subsidized by the CNMI and Federal governments.

The CNMI's continuing need for capital infrastructure funding (currently being subsidized by the Federal government at a rate of \$11 million a year under Public Law 104-134) is partially driven by uncontrolled immigration. Without the large alien temporary worker population, the CNMI would need substantially less new capacity in hospital, education, road, water, sewer and electric facilities. If their costs to the CNMI government were fully covered, it can be argued that the Federal taxpayer would not be called upon to subsidize costs beyond existing appropriations that more appropriately should be borne by employers (who benefit from cheap alien labor) and their customers.

In addition to the calculable dollar costs of services, infrastructure, and wages noted above, there is a moral cost for a society where frauds are commonly perpetrated on alien workers. An effective bonding or escrow procedure should be mandated to protect workers. Furthermore, there are also moral costs when the CNMI is the venue where alien women, some underage, are brought allegedly for purposes of "hostessing" but may also be engaged in prostitution.

o **CNMI policies have consequences overseas.**

By actions on March 29 and May 12, 1995, the Philippine government prohibited Philippine nationals from working in the CNMI as household workers, farmers, waitresses/receptionists and other related workers in bars and night clubs, and in jobs employing non-professional women. During the intervening year, the CNMI government worked to lift the ban. Finally, in mid-May 1996, the Philippine government rescinded the ban on Philippine workers in the CNMI.

### III. RECOMMENDATIONS

Last year's report, dated April 24, 1995, contained five recommendations: (1) confirm existing CNMI minimum wage increases in Federal law, (2) phase out CNMI Covenant financial assistance, (3) reserve \$3 million a year in CNMI Covenant funds for the Initiative, (4) require an annual report on the Initiative and coordination of immigration issues by CNMI and the Immigration and Naturalization Service, and (5) phase in full application of the Immigration and Nationality Act in the CNMI if alien workers exceed 1992 levels and law enforcement in the CNMI remains deficient.

Recommendations (2) on financial assistance and (3) on Initiative funding were implemented with the enactment of Public Law 104-134. Recommendation (1) on minimum wage was passed by the Senate in S. 638, but the House Committee on Resources has not yet acted on the measure. In the coming year, recommendations (4) and (5) will receive further consideration and may be revised by the Federal agencies participating in the Initiative.

The Federal-CNMI Initiative would be strengthened if the Congress would take action on the following recommendations by the participating Federal agencies (except National Labor Relations Board which, as an independent agency does not make recommendations). Agency participants in the Initiative can provide a legislative drafting service for these recommendations.

- (1) **Recommend that the Congress finalize enactment of section 2 of S. 638 to establish the minimum wage in Federal law including the annual 30-cent increases in the minimum wage contained in existing CNMI law.**

Currently, the Federal minimum wage provisions of the Fair Labor Standards Act do not apply in the CNMI. Congressional enactment is necessary to ensure workers are paid at least the minimum wage and to provide predictable wage increases for a stable labor environment and economic growth sought by the CNMI Chamber of Commerce, the CNMI Contractors' Association, and the CNMI Hotel Association. Increasing the minimum wage will stimulate the local economy by raising the purchasing power of workers and increasing government revenues through greater tax collections from workers. Moreover, increasing the minimum wage will not increase unemployment among United States citizen residents, who have jobs that pay above the projected minimum wage. Minimum wage increases, therefore, primarily affect alien workers. Since the growth of the alien labor force may be slowed by increasing the minimum wage, there will be a favorable effect on related problems including

illegal employer labor actions, strain on infrastructure, organized crime and illegal drugs. In our view, reducing the existing incentives to hire alien workers at lower wages than those prevailing for local workers should help slow uncontrolled immigration and perhaps help prevent the need for greater Federal control of immigration.

- (2) **Recommend that the Congress direct the CNMI to utilize Covenant funds for prison and detention facilities.**

Several task force agencies suggest that as law enforcement in the CNMI becomes more effective, current substandard facilities must be replaced by an up-to-date 200 bed facility that would house local prisoners, immigration detainees, and Federal prisoners.

#### IV. INITIATIVE AGENDA

During the next year, agencies participating in the Initiative will examine the following issues, among others:

- o If immigration control by the CNMI does not become more effective, develop options to increase the Federal role in local immigration as is necessary to establish immigration control. These options must give consideration to self-government in the CNMI and local economic development needs.
- o Devise a plan for information sharing and cooperation between the CNMI and the Immigration and Naturalization Service (INS) including identification, and if necessary, CNMI exclusion or deportation of persons who represent security or legal risks to the CNMI or the United States.
- o Develop specific information during the next year as to the scope, nature, and frequency of any requirement that alien workers sign shadow contracts that diminish the effective minimum wage paid in the CNMI, and consider possible changes in CNMI and Federal law.
- o Develop a means for addressing non-payment of wages to employees and unreimbursed costs to the CNMI government.
- o The stationing of Department of the Interior (DOI) Office of Inspector General (OIG) personnel in the CNMI, contingent upon adequate funding for this purpose, to provide investigative support for the Initiative to an extent consistent with the OIG's authority under the Inspector General Act of 1978, as amended.



## SUMMARY OF ACTIVITIES AND PLANS

### CNMI-FEDERAL JOINT EFFORTS

The Initiative provides a framework for the CNMI government and Federal government to work jointly on labor, immigration, and law enforcement issues. The result is intended to be a synergy that increases the effectiveness of both. There is daily communication between local and Federal administrative and law enforcement personnel. Federal training of local personnel is on-going on several fronts.

The Initiative provides funding and impetus for coordination of numerous facets of the Initiative that are conducted by individual agencies in the CNMI and Federal governments under the individual and distinct authorities accorded those agencies. The following is a outline of agency action, both Federal and CNMI.

### FEDERAL ACTIONS

Of the \$7 million appropriation, \$4 million has been allocated through reimbursable support agreements to Federal agencies to enhance their ability to address labor, immigration, and law enforcement issues. The reports of individual Federal agencies are attached with a synopsis appearing here:

#### Department of Labor

The initial agreement provided \$1.6 million to the Department of Labor (DOL) to make available Federal staff to expand local enforcement resources and to train CNMI labor enforcement, certification and immigration personnel in order to improve the local governments' ability to enforce its own labor and immigration laws.

- o The Wage and Hour Division has established an office in Saipan with two senior investigators. These investigators have directed joint DOL/CNMI investigations in industry sectors where high levels of noncompliance have been found in the past. In addition, the Federal staff have prepared and presented educational and training workshops for specific employer groups as well as the general business community in order to promote employers' understanding of United States labor laws that are applicable in the CNMI. These investigators have undertaken two major initiatives that involved in close coordination with the CNMI labor department to develop a training plan and a compliance assessment plan. Wage and Hour conducted twenty-one investigations during the period April 1995 through March 1996, with enforcement actions resulting in the payment of \$1,693,771 in previously unpaid back wages to more than 1,600 workers.

- o Investigate activities relating to transportation or coercion of women for prostitution.
- o Aid the CNMI in developing a plan for construction of correction and detention facilities.
- o Continue to seek international cooperation that complements Federal efforts in the CNMI with regard to labor, immigration, and law enforcement policies.

Plans: During the next 18 months, the enforcement plan provides for an expansion of on-going enforcement efforts in the garment, construction, hotel/restaurant/night club and the security industries, and the reinvestigation of a sample of firms previously investigated to determine the current compliance status of these firms. The education component will focus on businesses that have no formal association or industry group representation. An outreach effort will focus on efforts to insure that new workers understand their rights. The Division will continue discussions with the CNMI government regarding structural changes in the local labor laws.

- o The Department of Labor's Solicitor continued to work with the Wage and Hour Division on a jointly developed enforcement strategy focusing on industries with poor compliance records. In fiscal year 1995, efforts were concentrated on the private security guard industry. Solicitor filed actions in the U.S. District Court against the largest security companies in the CNMI. Three different cases (two security and one garment) were filed resulting in judgements totaling over \$1,342,174 for back wages and liquidated damages impacting over 420 persons. A fourth case is under appeal. Solicitor has also successfully negotiated settlements for OSHA violations. Solicitor's staff was a part of a Federal delegation to meet with officials of the Philippine government to discuss labor conditions in the CNMI. Information was exchanged on how to improve the conditions of nonresident alien workers and the enforcement of Federal law.

Plans: It is anticipated that Labor's enforcement activity will generate additional Wage and Hour and OSHA cases that will be referred to the Solicitor in the next eighteen months. Solicitor will coordinate with Wage and Hour and OSHA regarding training of CNMI staff and the community.

- o The Occupational Safety and Health Administration (OSHA), through a cooperative education program at the Northern Marianas College, has conducted 14 of the 34 educational seminars and workshops planned for employer and employee groups. Participants numbered over 1,000, mostly from the garment and construction industries.

Plans: In addition to completing the current training effort, OSHA plans during the next year to increase the number of these strike force visits from two or three a year to four to six a year. OSHA believes that team inspections rather than a resident inspector is the most effective way to achieve the desired result of compliance with OSHA by the garment industry, labor camp owners, and construction operations.

- o Employment and Training Administration (Office of Labor Certification) has provided technical assistance to the CNMI for review of the local labor certification system.

Plans: Continued assistance to local labor certification.

### **National Labor Relations Board**

- o The National Labor Relations Board (NLRB) is charged with providing an orderly process for protecting and implementing the respective rights of employees, employers and unions in their relations with one another by (1) determining and implementing, through secret ballot elections, whether there shall be union representation and, if so, which union; and (2) providing remedies for unlawful acts called unfair labor practices. During the past year, 60 unfair labor practices (affecting 1500-2000 workers) and seven representation petitions have been filed with the NLRB. NLRB has been successful in reaching settlements in five cases involving back pay and reinstatement of employees. As of March 1996, NLRB has a larger than anticipated number of CNMI cases. At the initial investigation stage there are 42 unfair labor practice charges involving various employers employing over 1000 employees.

Plans. The NLRB has sent an experienced attorney to the CNMI for three months from April to July 1996 to investigate and handle legal assignments and to serve as a source of information to people in the CNMI. NLRB anticipates an increased presence would also allow for training and enforcement in the CNMI regarding the National Labor Relations Act.

### **Department of Justice**

The initial agreement provided \$2.2 million to the Department of Justice to increase federal law enforcement presence in the CNMI and to provide technical assistance to the CNMI to improve their ability to enforce their local laws.

- o Immigration and Naturalization Service (INS) has two responsibilities with the Initiative. The first is the assignment of an experienced immigration investigator in May 1996 to the CNMI for two years to assist immigration enforcement. The second involves assisting the CNMI to develop its computerized Labor and Immigration Identification and Documentation System (LIIDS).

Plans. The INS investigator will assist the CNMI Immigration and Labor Department in implementing effective systems and business processes. INS will conduct an Independent Validation and Verification (IV&V) process of the LIIDS as it progresses and make recommendations for optimal system effectiveness.

- o The United States Attorney for Guam and the Northern Mariana Islands reported an increased caseload in the CNMI in 1995. The number of cases for 1996 is running at almost double the 1995 rate.

Plans. The United States Attorney will coordinate and follow-through with the prosecution of cases now being developed by the numerous Federal investigative agencies.

- o The Drug Enforcement Administration (DEA) conducted a narcotics assessment in the CNMI and has based its plans on how to address the drug problem in the CNMI on that assessment. DEA has conducted three training sessions with the officials of the CNMI and has established an Ad-Hoc Task Force with the local government. DEA has initiated fifteen investigations and has made several arrests relating to the sale of crystal methamphetamine. Since October 1995, a senior special agent from the Guam DEA office has been assigned to primary duty to deal with CNMI issues.

Plans. DEA believes that the training of local law enforcement officials will produce the best overall result for drug enforcement in the CNMI, and plans to focus its efforts in the training area.

- o The Criminal Section of the Civil Rights Division at Justice is coordinating with FBI agents stationed in the CNMI a review of allegations and information for application of federal criminal civil rights statutes.

Plans. The Criminal Section of Civil Rights has instituted a plan to review allegations that may warrant investigations. In early summer, a senior attorney will travel to the CNMI for an on-site evaluation.

- o The Federal Bureau of Investigations (FBI) has assigned an additional Special Agent in Saipan for two years. This assignment makes a total of three FBI agents stationed in the CNMI, two already assigned prior to the Initiative. The additional agent will focus on investigations of civil rights violations, public corruption, and organized crime.
- o Plans. The FBI has initiated liaison with various community support groups and local law enforcement agencies to provide information and training concerning federal criminal civil rights violations. The FBI will continue its relationship with the Criminal Section of the Civil Rights Division and the U.S. Attorney's Office in the CNMI to coordinate the review of allegations of federal criminal civil rights violations as well as violations of other federal criminal statutes.
- o National Institute of Corrections personnel have conducted training in correctional management for CNMI law enforcement officials. The immediate results were the development of five correctional policies and procedures and identification of the need for a corrections action plan.

Plans. With corrections and detention facilities in the CNMI woefully inadequate, new corrections facilities are recommended by several agencies. The Administration has

communicated its concerns to the Governor and intends to work with the CNMI to address this need.

- o The United States Marshals Service projects that the enhanced Federal investigatory and prosecutorial initiative will increase the requirement to provide valuable support services on behalf of and to the Federal Judicial District of the CNMI. An additional, full-time Deputy U.S. Marshal was permanently assigned on October 1, 1995, augmenting the Marshals Service's capabilities by 100%. This strategic decision proved to be a fortuitous one as incarcerations rose 245% in the first quarter of fiscal year 1996.

Plans. In addition to ensuring that adequate Marshals Service personnel staffing levels be maintained to meet the anticipated and steadily increasing workload requirements, the Marshals Service is in the process of finalizing a Partnership Agreement between their office, the CNMI Department of Safety, and the Guam Department of Corrections. The purpose of the Partnership between the key providers of detention service in this region will be "to share and align the Partners' resources to the mutual benefit of the participating regional detention service professionals." A pending "First Act of Partnership" will be the temporary housing of CNMI's Federal pre-sentenced detainees in the Department of Correction's detention facility on Guam. The Marshals Service is pursuing the implementation of a videoconferencing capability between Guam and Saipan to support this temporary accommodation. An anticipated "Second Act of Partnership" will involve the creation of shared training and employee development opportunities between the participating detention service professionals.

- o Child Exploitation and Obscenity Section (CEOS) of the Criminal Division is interested in working on prosecutions of individuals who transport, or conspire to transport, young women to the CNMI for purposes of criminal sexual activity, including, but not limited to, prostitution. CEOS is also interested in the prosecution of individuals who travel to the CNMI to engage in criminal sexual activity, including, but not limited to, prostitution. As a preliminary step to undertaking prosecutions, CEOS has conducted telephone interviews with federal government personnel in both the CNMI and Guam, many of whom provided information regarding the transportation of women and travel to meet these women in violation of the Mann Act.

Plans. CEOS expects to complete the preliminary phases of this project shortly. At that time, CEOS will develop a strategy to initiate investigations leading to prosecution of individuals organizing these criminal activities.

#### **Department of Treasury**

The initial agreement provided \$200,000 to the Department of Treasury for improving CNMI law enforcement.

- o The Bureau of Alcohol, Tobacco, and Firearms has provided assistance to the CNMI over the last year which has resulted in several cases targeting armed career criminals, numerous armed drug traffickers, and a case which is attempting to determine the source of illegal explosives. ATF made arrests for explosives and firearms, and prosecutions have involved charges under the career criminal statute.

Plans. Cooperative enforcement efforts with an emphasis on training for CNMI law enforcement officers will be a priority. Training will include firearms trafficking investigative techniques, interviewing and interrogation techniques, arson-for-profit investigations, undercover techniques, and operational security techniques.

- o The United States Secret Service has participated in major investigations culminating in arrests, including bank fraud, justice obstruction, mail theft and drug distribution. Several cases have been investigated including counterfeit currency, credit card fraud, theft and forgery of US Treasury checks. Secret Service rotates an agent through Saipan for two weeks out of every two-month period.

Plans. To continue participation in Task Force efforts and to support the Federal-CNMI labor, Immigration and Law Enforcement Initiative to the extent possible.

- o The United States Customs Service has stationed several rotating special agents in the CNMI to work with CNMI customs and public safety personnel with the primary objectives of investigating illicit drug trafficking, illegal arms export, violations of currency controls, money laundering, illegal transshipment of textiles, and other CNMI and Federal law violations. Ten investigations in the last six months, have resulted in five arrests and the seizure of counterfeit currency, unregistered firearms, and drug paraphernalia. Two training sessions have focused on safety and mental preparation for armed confrontation, inspections at airports and seaports, and canine operations. The U.S. Customs Service has established a U.S. Treasury Task force in the CNMI consisting of one or two U.S Customs Special agents and officers from the CNMI Department of Public Safety and the CNMI Customs.

Plans. U.S. Customs Service plans to continue the task force and is prepared to support the initiative with temporary details. It is believed that more work can be done to enhance the enforcement efforts in the labor area by concentrating on investigations of the garment industry and the transshipment of textile products through the CNMI.

#### **Department of the Interior**

- o The Department of the Interior Inspector General has expanded its investigation of public corruption in the CNMI as its contribution to the Initiative. A senior agent from the OIG's Guam field office is assigned to the Initiative and frequently travels to the CNMI

in furtherance of investigations. This agent has extensive experience conducting public corruption investigations in the territories. Currently, the Interior Office of Inspector General has five investigations that have been initiated as a result of Initiative efforts to ferret out public corruption in the CNMI.

Plans. If it is recommended that the Inspector General establish a physical presence in the CNMI for Initiative purposes, funding will be necessary.

## CNMI ACTIONS

Of the \$7 million appropriation, \$3 million was granted by the Office of Insular Affairs, Department of the Interior to the CNMI for local action.

\$1.5 million of the \$3 million of federal assistance was provided to establish a computerized labor and immigration identification system. The CNMI accepted the grant on December 31, 1995.

### Labor and Immigration Identification and Documentation System

**Amount authorized: \$1,500,000**

The Labor and Immigration Identification and Documentation System (LIIDS) is an ambitious undertaking of the CNMI government to develop a computer system to track and to manage the entry and exit of tourists and to control the influx of alien laborers required by the CNMI economy. The system will improve and automate the method of reviewing labor and immigration documentation for issuance of permits and identification cards, better serving the government and the private sector.

The CNMI is working closely with the INS on developing the system. The CNMI has developed a prototype system and data base that is currently operational. It has included all labor permitting actions taken since July 1995. By June 1996, the LIIDS program is scheduled to have a prototype system that (1) will be able to log individual foreign worker identity, and labor and immigration data, (2) build a standard data base for this information, (3) issue entry permits that verify an individual's initial entry status, and (4) issue identity cards for each foreign worker. The LIIDS will be used beginning in late May 1996 to issue alien labor identity cards to all workers whose data has been entered in the LIIDS data base since it went on-line.

This model has helped the CNMI define its existing formal and informal processes of managing labor and immigration services, and has already led to improved management practices. The model is now being used to better define the user requirements and functionality of the ultimate system.



The CNMI has recently increased its Labor and Immigration professional staff to complete and maintain the LIIDS. It has added an information systems manager, a logistics and training engineer and a systems technician, and will soon hire a software engineer. The next step in the LIIDS development will focus on airport arrivals and departures for passport and tourist visa control. While early contractual and staffing interruptions caused delays, INS, CNMI, and OIA believe that the project is now progressing at a satisfactory pace. The CNMI expects the project to be completed in 18 months.

Full implementation will require additional attention from those involved in the Initiative to develop robust operational support for management control of all alien workers and arrival and departures of international travelers.

#### Local Project

The remaining \$1.5 million federal assistance to the CNMI was granted to carry out mutually agreed projects to address problems related to immigration and alien labor. It was accepted by the CNMI government on December 12, 1994. The first project plans were submitted in January 1995. Ten CNMI projects are currently operational.

#### Labor Code Revision

**Amount authorized: \$83,000**

The CNMI's labor code was inherited from the Trust Territory government and has been revised slightly since the establishment of the Commonwealth. Existing law reflects a time and an economy in which alien labor played a small role.

The CNMI in June 1995 contracted with an attorney to review existing law and draft new legislation better reflecting the current needs of the CNMI. The contract also requires the submission of draft regulations to implement the legislation. The CNMI legislature will enact or reject the code revision as it sees fit. The project is scheduled to be completed in June 1996.

#### Administrative Judge- Labor

**Amount authorized: \$108,000**

Although the CNMI has not yet requested reimbursement for this project, the Administrative Judge has been hired and is functioning. The CNMI reports that the backlog of pending labor cases is rapidly being reduced.

#### Assistant Attorney General/Labor

Amount authorized: \$77,000

The CNMI has not reported on this project.

#### Criminal Code Revision

Amount authorized: \$117,000

The Commonwealth criminal code is an amalgam of the Trust Territory Code, the Model Penal Code and provisions from various state jurisdictions. It is said to be typical of a criminal code of twenty years ago. The project goal is the revision and expansion of the code to reflect the needs of the CNMI within the American jurisprudence system. The project was initiated in June 1995 and should be completed in 1996. The CNMI legislature retains the right to enact or reject the revision.

#### Rota Attorney General

Amount authorized: \$77,000

Funds were requested to allow the Attorney General to maintain a full-time Assistant Attorney General in Rota. The new official has been hired and is now in residence on Rota.

#### Criminal Attorneys

Amount authorized: \$230,006

This project was requested in response to the large caseload of criminal prosecutions in the Criminal Division of the Commonwealth. Two prosecuting attorney positions have been filled.

#### Informant Payment Fund

Amount authorized: \$20,000

The funds were requested to allow the Department of Public Safety a source of payment for confidential information. The Department is using Justice Department administrative guidelines for use of the funds.

#### Deportation Fund

Amount authorized: \$30,000

The funds were approved in November 1995 to allow the CNMI a source of funds for deportation. No funds have been requested to date.

**Investigative Unit****Amount authorized: \$375,000**

The CNMI requested these funds to address its need for special investigative expertise not available within its traditional law enforcement service. The open nature of the CNMI economy, coupled with a heavy influx of visitors and alien workers has made the CNMI a potential target of international criminals and increased opportunities for official corruption. The CNMI Attorney General's Investigative Unit has been augmented with additional funding and staffing and offices in Tinian and Saipan.

The investigative unit is under the confidential control of the CNMI Attorney General. Its focus is on white collar crime, official corruption, alien smuggling and organized crime. The unit has been functioning since the summer of 1995.

**Protective Services****Amount authorized: \$75,000**

The Protective Services program has been subgranted to Karidat, a non-governmental organization providing social services in the CNMI. Karidat provides outreach to alien workers who may be in need of special assistance due to disagreements with or abuse by their employers. A full-time and a part-time caseworker are available to provide advocacy services for alien workers in the CNMI. Karidat is able to provide short term shelter and assistance to alien laborers as the need arises.

**Federal Agency Reports**

## **U.S. Department of Labor**

**Wage and Hour**

**Solicitor's Office**

**Occupational Safety and Health Administration**

**Employment Training Administration**

## U.S. Department of Labor Activity in the CNMI

In 1995, the Department of Labor (DOL) entered into a reimbursable agreement with the Department of Interior which provides for reimbursement for specified DOL enforcement, training and support for the Commonwealth of the Northern Mariana Islands (CNMI). The reimbursable funding is being used for training and enforcement support to the CNMI government to make meaningful and lasting improvements in the labor and immigration problems associated with the large number of nonresident workers being brought to the islands to work in a variety of low-wage industries. The vast majority of these workers are from the Philippines, however China, Korea, and Bangladesh are also supplying workers in the CNMI.

The DOL agencies involved in these labor standards enforcement, training and support activities are the Wage and Hour Division, the Occupational Safety and Health Administration, the Solicitor's Office, and the foreign labor certification activities within of the Employment and Training Administration.

The initial agreement provided Labor with \$1.6 million over two years to make available Federal enforcement and support staff to train CNMI labor enforcement, certification and immigration personnel in order to improve the local governments' ability to enforce its own labor and immigration laws. This agreement has allowed the Wage and Hour Division to station additional investigators in the islands to direct joint DOL/CNMI investigations at industry sectors where high levels of noncompliance have been found in the past. In addition the Federal staff have prepared and presented educational and training workshops for specific employer groups as well as the general business community in order to ensure that employers understand what is required under the U. S. labor laws applicable in the CNMI.

Wage Hour Division

In April 1995, two Wage Hour investigators established an office in the CNMI to supplement the enforcement support previously provided by the senior Wage Hour investigator stationed in Guam. After meeting with and developing points of contact with the CNMI government, the Wage Hour staff undertook two major initiatives that involved working in close coordination with CNMI labor department managers and staff.

The first initiative involved the development of a training plan for all CNMI managers and staff involved in labor law enforcement. This training utilized the Division's Basic Investigator training material tailored to the local CNMI situation. The training was designed to include an emphasis on

specific administrative and technical subject matter including interviewing techniques, narrative report writing and case file preparation. Over a four month period in 1995, the customized basic investigator training course was provided to all CNMI labor department enforcement staff. During the presentation of the basic training classes and continuing after the completion of the formal classroom training, joint investigations were conducted with the CNMI labor department staff in order to provide on-the-job training experiences utilizing the skills learned in the training classes.

The second initiative involved the development by Wage Hour staff of a compliance assessment plan to establish baseline compliance levels in various low-wage industries which employ the vast majority of the nonresident alien workers employed in the CNMI. As a result of this assessment, Wage and Hour focused enforcement efforts in the garment, security, building maintenance and hotel and restaurant industries in 1995. During the past year, educational outreach seminars were presented by the Wage Hour staff for two industry associations that together employ a large percentage of the nonresident alien workers on the island -- the Saipan Garment Manufacturers Association and the Hotel Association of the Northern Mariana Islands. Large numbers of nonresident workers in the garment industry are from China and the Philippines while virtually all of the workers in the hotel industry are from the Philippines.

Since the majority of nonresident workers in the CNMI are from the Philippines, the U.S. Embassy in Manila suggested a meeting between U.S. government officials and officials of the Philippine government to discuss how to improve the current labor conditions for Philippine contract workers in the CNMI. In June 1995, a delegation representing the Department's Wage and Hour Division and Solicitor's office and the U.S. Attorney for Guam and the CNMI traveled to Manila and met with the Philippine Secretary of Labor, the Chief of the National Investigative Service (Philippine FBI), the President's Special Representative for Overseas Contract Workers as well as the U.S. Ambassador to the Philippines. The delegation discussed labor conditions in the CNMI including the recruiting practices for obtaining contract workers in the Philippines and the living conditions and wage payment arrangements of the contract workers brought to work in the CNMI. The discussions focused on the responsibilities of the various federal agencies in enforcing labor laws in the CNMI as well as actions that can be taken by both Governments to improve the conditions faced by overseas contract workers in the CNMI.

The Philippine government representatives pledged support to the U.S. officials to assist the U.S. Departments of Labor and Justice in enforcing federal laws in the CNMI by identifying and prosecuting offending employers and recruiters in the Philippines as well as to help locate former employees for the purpose of both obtaining information and for distributing back wage checks.

During the past year, the Wage Hour investigators stationed in the CNMI conducted 20 investigations in the garment, security, building services and the hotel/restaurant/night club industries. These enforcement actions resulted in the finding of over \$1,288,000 in unpaid back wages due to over 1,600 workers.

For the remainder of FY 1996 and into FY 1997, the enforcement plan provides for an expansion of the on-going directed enforcement efforts in the garment, construction, hotel/restaurant/night club (both large and small firms) and the security industries. As a part of these investigations information will be gathered as to the compliance ripple-effect that prior investigations in a particular industry sector have had on businesses not previously investigated. In addition, over the next 18 months the Division will reinvestigate a sample of the firms previously investigated to determine the current compliance status of these firms. The results of these analyses and reinvestigations will allow the Division to better plan for future enforcement initiatives including the more frequent use of consent decrees, injunctions and litigation.

For the next 18 months the education and outreach component of the compliance plan will focus on businesses that have no formal association or industry group representation. The Chamber of Commerce will be contacted and asked to facilitate the scheduling of educational outreach meetings with firms in the security industry as well as retailers and the smaller hotels, bars and restaurants not currently members of the Hotel Association.

Another outreach effort planned for the next year will focus on ensuring that new workers brought to the CNMI understand their rights under the Federal labor statutes that apply in the Commonwealth. Departmental staff from the Wage Hour Division, OSHA and the Solicitor's office will develop and distribute comprehensive and easily understood literature concerning employee rights and employer responsibilities under applicable Federal labor laws.



This information will be made available through the local Wage Hour office, the Philippine Consulate, the Philippine Overseas Employment Office, Karidot (Catholic Relief Organization in the CNMI), the CNMI Chamber of Commerce as well as various offices of the CNMI Departments of Labor and Commerce.

During the next year, the Division will continue discussions with local officials regarding structural changes in the CNMI labor laws that would help provide greater protections in ensuring proper and timely wage payments for employees not covered by the Federal labor laws. Most of these workers are nonresident aliens employed as farmworkers, maids and as employees of small businesses in the CNMI.

The total FY 1997 costs for maintaining two Wage Hour investigators in the CNMI, continued additional enforcement support from the senior Wage Hour investigator stationed in Guam and the conduct of two to three multiagency (WH and OSHA) task force concentrated enforcement efforts in one or two selected industries is estimated to be \$325,200.

Finally, the Administration's position on applying the Federal minimum wage to the CNMI was articulated in the previous report to the Congress in April 1995. In that report the Department proposed that the most expedient, fairest and least disruptive approach to applying the minimum wage provisions of the FLSA to the Commonwealth would be to incorporate into the FLSA the current Commonwealth minimum wage law, including its \$.30 an hour annual increases until the mainland minimum wage level is achieved.

The CNMI government and the Legislature had agreed on the current CNMI law after lengthy discussion, debate and input from the business community in the Commonwealth. This approach would establish phased minimum wage increases under Federal law and thereby eliminate the possibility of future local action to either further postpone or eliminate this gradual increase in the minimum wage for workers in the islands. In addition, it would allow Federal enforcement of the minimum wage, thereby enhancing enforcement resources available.

It is quite clear that the labor problems in the CNMI cannot be resolved without a sustained long-term commitment by the Governor and the Legislature to change and improve the conditions that have given rise to these problems. While the Governor, in the past, has been supportive of increasing the minimum wage, there are others in the Commonwealth who benefit from maintaining the status quo and will continue to resist increases in the minimum wage and other reforms to improve the living and working conditions of these nonresident alien workers.

It is unfortunate that during the past year the Legislature was successful in passing legislation, and then overriding the Governor's veto of the bill, which temporarily stopped the scheduled \$.30 per hour CNMI minimum wage rate increase (from \$2.75 to \$3.05 per hour) set to go into effect on January 1, 1996. This legislation postponed the scheduled increase to July 1, 1996.

During a February visit to the Commonwealth by Senators Frank Murkowski and Daniel Akaka, the Governor assured the Senators that he would submit proposed legislation which would have reinstated the \$.30 per hour minimum wage increase effective April 1, 1996. The CNMI House approved the April 1st minimum wage increase, however the Senate proposed an April 15th increase with an exemption for small businesses. In mid-April the House rejected the Senate version of the minimum wage increase because of the change that exempted small businesses. In a press conference on April 19th, Governor Tenorio indicated he now supports the postponement of a minimum wage increase until July 1, 1996, while a wage specialist from the U.S. mainland conducts a study on the issues and how increasing the minimum wage will affect the Commonwealth. Thus the current CNMI minimum wage remains at \$2.75 an hour, as it has been since January 1, 1995.

Federalizing the minimum wage in the CNMI will ensure that the wage rate increases enacted by the government and Legislature three years ago will go into effect as intended thus providing for gradual and predictable increases in the minimum wage rate which is paid to virtually all the nonresident workers who are employed in the low-wage labor-intensive industries in the Commonwealth.

## Solicitor's Office Activities

### Wage and Hour Actions

The Department's Solicitor's (SOL) and Wage and our Division (WH) continued with the jointly developed enforcement strategy focusing on industries with poor compliance records. In FY 1995, SOL and WH concentrated their efforts on the private security guard industry. After WH investigations revealed serious FLSA violations, SOL filed actions in the U.S. District Court against the largest security companies in the CNMI.

An action seeking preliminary and permanent injunctions, back wage and liquidated damages was filed in Reich v. Antonio Aldan Reyes dba Business Protection Service, for monetary violations of the Fair Labor Standards Act (FLSA). Defendant Reyes, then CNMI Chief of Police, agreed to the injunctions and back wages and liquidated damages totaling \$692,569.

A similar action, Reich v. Famco Security Services, et al., was filed against a private security guard company and its proprietors. One of the defendants is the Minority Leader in the Northern Marianas House of Representatives. The complaint alleged the firm willfully and repeatedly violated the overtime provisions of the FLSA by failing to meet their payroll on numerous occasions and by failing to pay the mandated overtime premium on those occasions when wages were paid. After agreeing to a preliminary injunction, all defendants subsequently defaulted. A judgment was entered awarding 44 employees \$513,416 in back wages and liquidated damages. The defendants have subsequently filed for a discharge of their debts in Bankruptcy Court.

Finally, in Reich v. Saipan Manufacturers, Inc., et al., SOL filed an action against this Saipan-based garment factory and its parent corporation for overtime violations related to defendants' practice of deducting the costs of placement fees and airline transportation. In a consent judgment, the court awarded \$136,189 in back wages to 376 alien workers for violating the overtime provisions of the FLSA. This is the first time a Saipan-based corporation agreed, in writing, to language prohibiting a company from taking payroll deductions, directly or indirectly, to recoup costs associated with recruitment and/or transportation of workers to the CNMI. Such recruitment-related payroll deductions are a widespread practice since a substantial portion of the CNMI workforce consists of nonresident alien workers.

SOL filed a cross-appeal of a partially adverse decision in Reich v. Japan Enterprises Corp., et al., involving Filipina nightclub "waitresses" employed by Japanese club owners on the island of Saipan. The employees worked a 42-hour, seven-night week and were confined to fenced-in quarters during their non-work hours. The Department of Labor alleged, and the court agreed, that the employees were not properly paid for all hours worked, including the time in confinement. In addition, the Department alleged that improper deductions were taken from the employees' wages. The court awarded back pay to the employees in the amount of \$410,497. Additional damages are sought on appeal.

#### OSHA Actions

On the eve of trial, SOL successfully negotiated settlements involving employers in Rota and Saipan. The resulting Settlement Agreements and Orders affirmed 119 citations against 4 employers and collected \$147,715 in penalties. Included among these employers was Willie Tan's L&T Companies which agreed to withdraw its contest to 53 citations and pay \$60,475 in penalties.

Additionally, SOL initiated collection actions in U.S. District Court against two firms for the failure to pay OSHA penalties which had become final. The two firms agreed to pay \$50,000 and \$20,000 respectively, on installment terms with interest.

#### Other Activity

In June 1995, SOL staff was part of a Federal delegation who met with officials of the Philippine government to discuss labor conditions experienced by their nationals in the CNMI. Information was exchanged and ideas were discussed on how to improve the conditions of nonresident alien workers in the CNMI and the enforcement of Federal law.

SOL staff traveled to China to oversee the distribution of \$4.6 million in back wages owed to Chinese workers which was recovered from American International Knitters Corporation, a garment factory operated by Willie Tan. In addition, the Corporation had pleaded guilty to criminal charges related to filing of false documents with the U.S. Government in relation to wage kick-backs. The final installment on the judgment is due October 1, 1996.

Additionally, SOL worked closely with the U.S. Attorneys for Guam and the CNMI as well as other law enforcement agencies for the purpose of improving U.S. Labor's enforcement of federal labor laws in the Commonwealth. Communications with the CNMI Attorney General have been streamlined so as to allow quick and easy retrieval of information on the status of businesses and the identification of proprietors, directors, shareholders and corporate officials.

Anticipated Activities

SOL attorneys have been in regular contact with the Wage and Hour Director of Enforcement in the Pacific offering informal assistance with respect to ongoing investigations. Where Wage Hour is not able to obtain back wages and future compliance on a voluntary basis, or where a court order is considered necessary because of the employer's history or the nature of the violations, SOL will consider filing hot goods, preliminary and permanent injunctions, seeking back wages, liquidated damages, and other relief as appropriate.

It is anticipated that enforcement activity will pick up and that additional cases will be referred to SOL in the next eighteen months. Additional cases are also anticipated under OSHA as a result of significantly greater enforcement activity in the CNMI. As a result of the greatly enhanced investigation activity to be conducted by OSHA, an additional \$95,000 is being requested in FY 1997.

SOL will coordinate with Wage-Hour and OSHA regarding training of CNMI staff and the regulated community.

**OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION  
PROGRAM ACTIVITIES IN CNMI  
July 1995 - March 1996**

As a part of the 1995 Congressional/DOI Federal-CNMI Labor, Immigration and Law Enforcement initiative, DOL/OSHA received \$400,000 for a two-year training and education program intended to familiarize local employers and employees on their rights and responsibilities as regards the OSH Act. Of the \$400,000, \$288,000 was granted for the Northern Marianas College (NMC) for the development and administration of the training and education effort. The balance, \$112,000, was intended to fund an additional FTE for OSHA for the purpose of providing technical assistance and monitoring of this program.

The training and education program by NMC was compressed into 18 months and was initiated in July 1995. The program includes 34 training and education seminars and workshops for employer/employee groups regarding rights and responsibilities under OSHA, inspection procedures, appeals process, and occupational safety and health regulations.

- The target industries for these seminars were garment manufacturing, construction, and labor camps related to the first two industries.
- Seminars and workshops were to be conducted in Saipan, Rota and Tinian.

The first three months of the program were dedicated to organizing staff, developing curricula, and training of trainers by OSHA.

The initial seminar and related workshops were held in Saipan in September. The seminar highlighted the basic requirements of OSHA in the targeted industries. Two hundred twenty-one attended this session. Interpreter services translated presentations into Chinese and Tagalog for the benefit of the audience. Ninety percent of the attendees represented were from the targeted industries and 90% indicated their companies provided temporary housing to employees.

To date, 14 seminars have been held with 1,023 people attending, for an average seminar attendance of 73. Ninety-seven percent of the attendees are from either construction or garment manufacturing companies.

Thus far, NMC has drawn down approximately \$120,000 of their \$288,000. There are 20 seminars still planned before the expiration of OSHA's agreement. NMC has \$168,000 in funds remaining to cover the costs of these efforts.

Although OSHA was unable to acquire an extra full time position dedicated to technical assistance for the NMC, it has expended four on-site visits and approximately 50 percent of an existing FTE to assist on the program. This leaves approximately \$70,000 yet to be spent by OSHA on this effort.

We at OSHA are pleased with the training and education program administered by NMC. Voluntary compliance is a key aspect of the OSH Act and training and education is the cornerstone to voluntary compliance. The seminars that we have observed are of good quality and are serving to accomplish our intent. It also demonstrates that OSHA is using tools in addition to enforcement to achieve work place safety.

#### **OVERALL ASSESSMENT OF OCCUPATIONAL SAFETY AND HEALTH NEEDS IN CNMI**

Our enforcement efforts continue to demonstrate major areas of non-compliance with basic safety and health requirements on construction sites, in garment manufacturing, and in labor camps. Non-compliance appears to be directly related to the use of foreign contractors and foreign workers employed at these sites.

While we believe that training and education is important, we also know that there is a limit to the value of such a program in CNMI. Further, while we also believe that consultative services have value, we are not certain that there is a need for a full time consultant in Saipan. Privatizing consultative services may be more practical in this location.

In view of our continued finding of violations in garment manufacturing, construction, and labor camps, we have concluded that an increased enforcement presence augmented by a small maintenance level of training and education and a privatized consultation service is desirable. Further, based on our past experience dealing with resident inspectors and contract enforcement efforts contrasted with our more successful team inspections conducted by off-island compliance officers, we believe unscheduled team inspections is a preferential means of maintaining our enforcement presence.

#### **PROGRAM ACTIVITIES FOR APRIL 1996 - DECEMBER 1996**

We plan to complete the current training and education effort. We believe that at the conclusion of the current training program that a minimal maintenance training and education effort will satisfy the need to train new employers and employees.

This would include three to four seminars per year. Monies budgeted, but not yet expended for OSHA technical assistance will be shifted to cover additional enforcement visits in FY-96 and into FY-97.

Currently, OSHA is conducting two to three team inspections in CNMI each year. OSHA has determined that these team inspections produce more inspections and more penalties than resident inspectors in other similar locations. OSHA believes that there is an immediate need for two to three additional team inspections each year in CNMI. If the garment industry grows further, or if the number of foreign workers increases, there may be an eventual need for a greater enforcement effort. The increased enforcement presence inevitably means increased litigation costs. We are of the firm opinion that team inspections rather than a resident inspector is the most effective way we will be able to achieve the desired result of compliance with the OSH Act by garment manufacturing, labor camp owners, and construction operations.

Continued congressional funding at the current levels would provide a very welcome assistance to OSHA in CNMI.



Employment and Training Administration

In December 1995, staff from the San Francisco Regional Office of the Employment and Training Administration (ETA) conducted an on-site technical assistance visit to the Commonwealth of the Northern Mariana Islands (CNMI) to review the local labor certification system. As a result of observing the current processes and meetings with various officials in the CNMI labor certification program, the ETA staff provided recommendations which, if implemented, would resolve many of the administrative and technical problems found during the review of the present labor certification system.

Senior officials in the CNMI employment service are to review the recommendations and will implement those that improve the employment service processes and reduce the dependence on non-resident alien workers. In order to improve the operations in the local employment service office, CNMI officials are seeking to hire an Employment Service Advisor who has previous experience in the operations of an employment service office including technical knowledge in the operations of a labor certification program. ETA in San Francisco are assisting in the search for appropriate candidates for this position.

Both the Federal and the local CNMI officials agree that the local officials would benefit from technical assistance and information sharing from other state employment security agencies such as the office located in Hawaii.

Cooperation and coordination on the part of the Federal staff is planned on an as-needed basis through the remainder of 1996 with follow-up on-site visits to provide additional technical support after the CNMI staff begin to put in place the improvement initiatives. Continued support will be provided through fiscal year 1997.

Continued technical support and assistance to be provided by ETA to the CNMI through the Department of the Interior's reimbursable agreement for fiscal year 1997 is estimated to cost \$15,000.

## **National Labor Relations Board**

REPORT OF THE NATIONAL LABOR RELATIONS BOARD  
ON THE FEDERAL-CNMI LABOR, IMMIGRATION AND LAW  
ENFORCEMENT INITIATIVE FOR THE  
PERIOD MARCH 1995 - MARCH 1996

BACKGROUND

The National Labor Relations Board is an independent Federal Agency established to administer the National Labor Relations Act (NLRA), the basic law governing relations between labor unions and business enterprises engaged in interstate commerce. The purpose of the NLRA is to serve the public interest by reducing interruptions in commerce caused by industrial strife. It seeks to do this by providing orderly processes for protecting and implementing the respective rights of employees, employers and unions in their relations with one another.

In its statutory assignment, the NLRB has two principal functions: (1) to determine and implement, through secret-ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers and, if so, by which union; and (2) to prevent and remedy unlawful acts, called unfair labor practices, by either employers or unions or both. *Micronesian Telecommunications*, 820 F. 2d 1097, 125 LRRM 3102 (9th Cir. 1987), acknowledged that the NLRB can assert jurisdiction over employers doing business in the CNMI.

NLRB ACTIVITY IN CNMI DURING PAST YEAR

During the past 12-16 months, about 60 unfair labor practice charges and seven representation petitions have been filed in our Subregion 37, Honolulu Regional Office involving CNMI employers and employees that work there. Subregion 37 estimates that these unfair labor practice charges, many of which are still pending, affected about 1500-2000 employees. The representation cases resulted in six elections, involving a total of about 1500 employees.

---

Subregion 37 believes that a large number of the unfair labor practice and representation cases were filed because of the publicity received in our handling of Saipan Hotel Corporation d/b/a Hafadai Beach Hotel, filed in the fall of 1994.

#### Hafadai Case

In Hafadai, a group of legal alien workers employed by the Hotel filed numerous charges alleging that the Hotel committed various unfair labor practices. At the same time these workers formed their own labor organization and filed a petition seeking an NLRB-conducted election. A hearing was conducted in January 1995 on the representation petition and as to the propriety of the Board asserting jurisdiction in the matter. Thereafter, a decision was issued by the Regional Director for our Region 20, San Francisco Regional Office (which has responsibility for Subregion 37) and, later by the Board, finding that jurisdiction was properly asserted.

An election was conducted on July 14, 1995 and ultimately the petitioning Union, Hotel Employees and Restaurant Employees Local 5, was certified as the collective bargaining representative of the employees. The Hotel declined to bargain with the Union, which resulted in an unfair labor practice charge alleging an unlawful refusal to bargain. On December 19, 1995 the Board issued a decision at 320 NLRB No. 24 reiterating its assertion of jurisdiction in the Hafadai matter and finding that the Hotel had unlawfully refused to bargain with the Union. The Hotel sought review of this decision in the Ninth Circuit Court of Appeals, and the Agency filed a cross petition for enforcement. A decision is pending.

At the same time, numerous unfair labor practice charges were filed against Hafadai with Subregion 37. After an extensive investigation, it was determined that approximately 25 employees of the Hotel were terminated because of their union activity and support. Because of the egregious nature of these and other alleged unfair labor practices, the Regional Director sought immediate interim injunctive relief, under Section 10(j) of the NLRA from the United States District Court for the Northern Mariana Islands. In June 1995 the judge granted the injunction and required the Hotel to immediately cease its unlawful conduct and reinstate the discharged employees.

Instead of participating in an unfair labor practice trial before an administrative law judge, representatives of the Hotel and of the General Counsel of the NLRB entered into a stipulated record which is currently pending before the Board in Washington. It should be noted that the Respondent essentially admitted it discriminated against the employees because of their union activity and support, but contested the Board's jurisdiction.

### Union Organizing Activity

While the Hafadai case arose in the hotel industry, union organizing in the CNMI has involved a variety of work settings, including a brewery, restaurants, department stores, grocery stores, shoe stores, bakeries, supper clubs, and garment manufacturers. It has largely involved the nonresident workers who are of Philippine ancestry.

In order to substantiate its organizing efforts and to show a commitment to the employees in the CNMI, the Hotel Employees and Restaurant Employees Local 5, AFL-CIO, informed us in February 1996 that it has established an office in the CNMI. That office has filed a steady stream of unfair labor practice charges in the past few weeks. We anticipate that the Union's presence will lead to an ongoing flow of charges.

### Pending Investigations and Litigation

As of March 1996 the Agency had pending before it a larger than anticipated number of CNMI cases. At the initial investigation stage there were 42 unfair labor practice charges involving various employers who employ over a thousand employees. The Agency has issued complaints in seven cases, and complaint has been authorized in two additional cases. Of these, two cases are awaiting determination by the Board and, as noted above, one significant case (the Hafadai case) is pending before the 9th Circuit Court of Appeals. The other complaint cases are awaiting trial before an administrative law judge.

Additionally, the Regional Director for Region 20 (which covers parts of California, and Hawaii, American Samoa, Guam and the CNMI) has recommended to the General Counsel that the Agency seek injunctive relief in the U.S. District Court ordering reinstatement of approximately 38

employees who were unlawfully terminated from a major CNMI employer. Two other such requests are in the final stages of investigation and are being considered by the Regional Director. Such cases involve significant amounts of investigation, analysis, and legal preparation.

In addition to the litigation mentioned above, the Agency has also been successful in reaching settlements in five cases. The settlements have ranged from the posting of notices to backpay and reinstatement of employees.

#### Contact with Various CNMI Government Agencies and Officials

Our Agency has had numerous written and oral communications with a variety of CNMI government officials ranging from the Director of CNMI Labor and Immigration to the Acting Attorney General. Most of these communications have arisen in the context of an apparent conflict between the National Labor Relations Act and the "local preference" provisions of the CNMI's Nonresident Worker's Act.

In all of our contacts, we have expressed our desire to work with the CNMI government in a cooperative effort to resolve some of the aforesaid apparent conflicts. It is recognized that our positions do not always coincide. On several occasions we have received cooperation and assistance from local officials. For example, in June and July 1995 the government was helpful in assisting the Agency to obtain temporary work permits for the nonresident employees at the Hafadai Hotel who were ordered reinstated pursuant to the U.S. District Court's decision discussed above.

However, CNMI policies are subject to change. Thus, in a matter of months (in December 1995), the government informed us that the CNMI would no longer grant temporary work permits to persons who were fired or non-renewed in their nonresident employment contracts with CNMI employers. Further, we were informed that those individuals would be subject to deportation. CNMI Labor & Immigration then notified certain individuals involved in some of our cases that they would be subject to deportation. This included two prominent union activists, Vicente Perez and Honorio Cambronero. Mr. Perez was forced to voluntarily leave the CNMI rather than suffer the consequences of a deportation order, notwithstanding

his status in the Hafadai case referred to above (in that case, Hafadai admitted it refused to rehire Mr. Perez because of his union activity.) The proposed deportation of Mr. Cambronero did not occur because the CNMI Department of Labor acted to accept and consider a claim he filed with them, which entitled Mr. Cambronero to a temporary work permit.

The above shift in policy meant that persons who alleged discrimination because of their union activity could have been deported before an NLRB agent could investigate their allegations. Similarly, employers could threaten nonresident employees with non-renewal of their contracts if they joined a union, complained about working conditions, spoke to an OSHA inspector or filed a complaint with the Department of Labor. In face of this, on February 16, 1996 NLRB General Counsel Fred Feinstein notified the CNMI Acting Attorney General in writing that the Agency would consider measures (including legal proceedings in the U.S. District Court for the Northern Mariana Islands), to prohibit the above policy and protect the workers' rights.

Thereafter, the CNMI government issued an interim policy whereby the CNMI Department of Labor and Immigration will issue temporary work permits to persons who file valid claims with the NLRB. Thus these individuals would not face deportation if they were able to obtain work.

The Agency has suspended its plans for legal action in light of the interim policy. CNMI officials have requested a greater NLRB presence in the CNMI, so that unfair labor practice charges could more quickly be investigated. The CNMI government was concerned that nonresidents would simply file NLRB claims to remain in the CNMI. Moreover, if the NLRB had a greater presence, an investigation would be able to segregate the nonmeritorious cases from those asserting viable claims. Further, the recent Congressional delegation to the CNMI has encouraged Federal Agencies to enforce U.S. labor laws, but to work in a spirit of cooperation with CNMI governmental officials so that mutual concerns can be addressed.

### Future Case Filing

Based upon the foregoing and the apparent unabated growth in the CNMI, it is fair to say that the Agency underestimated the amount of time we would need a full time agent in the CNMI. Apparently there are plans for 6,000 additional hotel rooms and an increased number of workers from the Peoples Republic of China. This would increase the number of nonresident workers and other employees who can avail themselves of U.S. labor laws.

The increased presence discussed above was not anticipated by our technical assistance request of November 28, 1995. As a result, we will probably need to amend that request later in the fiscal year. Certainly a request for additional money so as to adequately staff our activities in the CNMI for fiscal year 1997 will be necessary to handle the anticipated investigations, and legal proceedings, and to have a "presence" necessary to enforce the law.

We anticipate that this increased presence would allow us to give training to CNMI labor officials and business leaders regarding the National Labor Relations Act. Further, we would hope to finalize more formal joint cooperative efforts with CNMI government officials.

At present we have plans to send an experienced attorney from our San Francisco Regional Office to the CNMI for at least a 3-month period starting on or about April 8, 1996, or as soon as the Department of Interior receives the necessary Congressional funding. The U.S. Department of Labor has graciously allowed us to use some of their office space. That attorney will handle a variety of investigative and legal assignments, and serve as a source of information to people in CNMI who have questions about provisions of the NLRA.

The per diem and air fare costs, as well as staff time, associated with this detail (and future details which will clearly be necessary) will be significant. In addition the Agency will face the costs of litigating meritorious unfair labor practices, including travel for the trial attorney and the administrative law judge, as well as court reporting and transcript costs. Cases, such as Hafadaj, which require the Agency to seek interim injunctive relief in Federal Court pending disposition of the unfair labor



practice allegations have the potential for additional travel and other costs, as do, inter alia, cases which may require a hearing to dispose of determinative challenged ballots or objections to a representation election.

### **Proposed CNMI Rules and Regulations**

The CNMI government has specifically requested the Agency to comment by the end of March on proposed rules and regulations from the CNMI's Department of Labor and Immigration. The Agency submitted comments on March 28, 1996.

We want to emphasize that the NLRB General Counsel's office remains strongly of the view that, in order to effectuate the purpose and policies of the National Labor Relations Act, a nonresident worker must be permitted to remain in the CNMI pending final resolution of his case by the Board. This would, of course, include any legal challenges, including enforcement of Board Orders at the U.S. Court of Appeals.

### **Future Funding of the Initiative**

The NLRB was not one of the original members of the Federal-CNMI Labor, Immigration and Law Enforcement Initiative. However, approximately 1 year ago we became a member and have been most grateful for the assistance, support, and information supplied by the various task force members.

As noted above, the NLRB has been involved in substantial litigation with various business entities. The cases have involved virtually every aspect of the CNMI's economy, and have required a significant expenditure of the Agency's increasingly limited staff time and budgetary resources. It is absolutely imperative that the Initiative continue to be funded. If the Initiative funding was decreased or eliminated our Agency would not be able promptly or effectively to carry out our mandate to enforce the NLRA.

**U.S. Department of the Interior  
Office of Inspector General**

REPORT OF THE U.S. DEPARTMENT OF THE INTERIOR  
OFFICE OF INSPECTOR GENERAL  
ON THE FEDERAL-CNMI LABOR, IMMIGRATION AND LAW  
ENFORCEMENT INITIATIVE

BACKGROUND

The Office of Inspector General provides policy direction for and conducts, supervises, and coordinates all audits, investigations, and other activities in the Department of the Interior (DOI) designed to promote economy and efficiency or prevent and detect fraud, waste, and mismanagement. The Inspector General is DOI's focal point for independent and objective reviews of the integrity of operations; is the central authority concerned with the quality, coverage, and coordination of the audit and investigative services of DOI; and reports directly to the Secretary of the Interior on these matters. The Inspector General provides the means for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of DOI programs and operations and the necessity for corrective action.

In the insular areas of Guam, American Samoa, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the OIG performs the functions of government comptroller through audits of revenues, receipts, expenditures, and property in accordance with the Insular Areas Act of 1982 (48 U.S.C. 1422). The OIG has additional audit responsibilities in the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau pursuant to the Compact of Free Association Act of 1985 (P.L. 99-239). The authority of the OIG to conduct investigative activities in these areas is derived solely from the Inspector General Act of 1978, as amended. The Inspector General Act authorizes OIG personnel to conduct investigations only in those matters pertaining to the programs and operations of the Department.

OFFICE OF INSPECTOR GENERAL  
PARTICIPATION ON THE CNMI FEDERAL TASK FORCE

The OIG has been a member of the CNMI Federal Task Force since its inception. Indeed, prior to the creation of the task force, the OIG provided investigative coverage to the CNMI from its Guam Field Office. When the CNMI Federal Task Force was formed, the OIG expanded its investigation of public corruption in the CNMI as its contribution to the task force. A senior agent from the OIG's Guam Field Office is assigned to the task force and frequently travels to the CNMI in furtherance of task force investigations. This agent has extensive experience conducting public corruption investigations in the U.S. Territories. Currently, the OIG has five investigations that have been initiated as a result of task force efforts to ferret out public corruption in the CNMI.

CONSIDERATIONS FOR FUTURE PARTICIPATION  
BY THE OFFICE OF INSPECTOR GENERAL  
ON THE CNMI TASK FORCE

During the past year the OIG has received limited financial support (approximately \$20,000) covering the costs of our agents' travel to the CNMI in furtherance of task force investigations. This arrangement is the result of negotiations with DOI's Director of Insular Affairs. The OIG did not receive any of the \$7 million appropriated by Congress to support the Initiative and is not in a position, given our limited resources and small size (a total of only 39 agents) to absorb costs which may be associated with future task force activities. If additional support from the OIG is required, we recommend that funding be provided to the OIG to support that effort.

## **U.S. Department of Justice**

**Office of the Deputy Attorney General  
Drug Enforcement Agency  
National Institute of Corrections  
Immigration and Naturalization Service  
Executive Office for the United States Attorneys  
United States Marshals Service  
Civil Rights Division/Criminal Section  
Federal Bureau of Investigation  
Criminal Division/Child Exploitation and Obscenity Section**

## **DRUG ENFORCEMENT ADMINISTRATION**

### **ASSISTANCE TO CNMI**

Based on the recommendations of a Federal interagency working group, Congress provided funding to various Federal agencies to be used to support a new federal initiative in addressing law enforcement, labor, immigration and revenue issues in the Commonwealth of the Northern Mariana Islands (CNMI). What follows is a status report on the activities and accomplishments in the CNMI during the past year. Additionally, an assessment of the current situation was made resulting in the following Drug Enforcement Administration's recommendation to Congress.

#### **BACKGROUND**

On September 22, 1994, the Senate Subcommittee on Mineral Resources Development and Production heard testimony from Governor Froilan C. Tenorio of the Commonwealth of Northern Mariana Islands (CNMI) and the Administration on labor abuse, law enforcement and immigration problems in the CNMI. As a result of this hearing, a federal interagency working group was formed to develop a coordinate Administration position on these issues. Additionally, the working group developed an initial plan for the allocation of \$7 million appropriated by Congress under Public Law 103-332.

Subsequently, a Reimbursable Support Agreement was developed between the Department of Interior (DOI), Office of Territorial and International Affairs and the participating Departments reimburse the participating Departments for direct costs in providing assistance to CNMI in accordance with specific plans and costs estimates.

**BACKGROUND (continued):**

The Drug Enforcement Administration would enhance enforcement of Federal drug laws and train local law enforcement officials in drug investigative and enforcement techniques and practices. The working group, based on recent seizures of crystal methamphetamine ("ICE") in the CNMI from the Philippines, and their belief that there is a strong relationship between the aliens living and working in the CNMI and "ICE" trafficking in CNMI, recommended that the DEA station two (2) DEA agents in the CNMI for 1/2 of FY95 and all of FY96 and FY97. The estimated cost was \$750,000.

Before committing DEA personnel to CNMI, DEA elected to conduct the two separate on site assessments of the narcotics trafficking situation in the CNMI. The first assessment was a fact finding mission consisting of a series of in-depth interviews along with an extensive review of CNMI government records and other published statistical information in Saipan. The second facet of the original study entailed two Special Agents from Los Angeles, California participating in actual enforcement activity in Saipan to determine the level of drug trafficking activity and to evaluate the sophistication of identified drug traffickers.

Based on the results of these assessments the DEA has decided that the most efficient way to address the "ICE" problem was to conduct various training sessions for the CNMI law enforcement officials, and to establish an Ad-Hoc Task Force. DEA has received approximately \$250,000 under P. L. 103-332. Thus far, utilizing the funds from P.L. 103-332, DEA has conducted three separate training schools ranging from one day to two weeks (Firearms and Tactical Training, Drug Identification/Certification Training Course, and Basic Narcotics Law Enforcement School). DEA has also assigned a senior special agent from the Guam Post of Duty on a full time basis to travel to Saipan weekly (TDY) to supervise and initiate drug investigations with local law enforcement officers. We have initiated approximately 15 separate drug investigations involving "ICE" in Saipan.

## SUMMARY AND ACCOMPLISHMENTS

### March 8, 1995 to May 19, 1995

DEA dispatched two (2) Special Agents from the Los Angeles Field Division (LAFD) to begin a comprehensive law enforcement assessment of the narcotics trafficking situation in the Commonwealth of the Northern Mariana Islands (CNMI). The fact finding mission consisted of a series of in-depth interviews and extensive review of CNMI government records and other published statistical information in Saipan.

### August 3, 1995 to October 3, 1995

DEA dispatched the same two (2) Special Agents from the Los Angeles Field Division (LAFD) to initiate and complete the second facet of the original study in Saipan, CNMI. The agents incorporated actual enforcement activity to determine the level of drug trafficking and to evaluate the sophistication of identified drug traffickers.

The following two cases were initiated in which purchases of high purity crystal methamphetamine were purchased:

The first case was a cooperative investigation involving DEA, FBI-Saipan, Saipan Department of Public Safety (DPS), and Saipan Division of Customs (SDC). The investigation culminated with the indictment and arrest of the principal violator of Japanese/Korean descent and his wife, as well as three (3) local residents. Charges of Conspiracy to Import (21 USC 952), Conspiracy to Possess with Intent to Distribute and Distribution (21 USC 841 and 846), and forfeiture of currency (485,000 yen) have been levied against the defendants. Another indictment is expected in the near future for the arrest of a second suspect, who is a local resident. Approximately 200 grams of crystal methamphetamine was seized from one of the defendants.

The second case was a cooperative investigation involving DEA, FBI, Saipan DPS, and ATF. The principal defendant of Japanese descent sold 99% crystal methamphetamine and was arrested. Further investigation led to the seizure of 178.6 grams of crystal methamphetamine from the principal defendant. Pursuant to a plea agreement, the principal violator has pled guilty to Distribution of Methamphetamine (21 USC 841 (a) (1)) which carries a minimum of 10 years imprisonment and is now cooperating with DEA and FBI.

### September 5 to September 8, 1995

The Firearms Training Officers from the LAFD conducted Firearms and Tactical Training for the Guam POD personnel as well as law enforcement personnel from Saipan.



SUMMARY AND ACCOMPLISHMENTS (continued):September 22, 1995

Assistant Special Agent in Charge (ASAC) Sidney A. Hayakawa of the Hawaii District Office (HDO) dispatched three (3) Guam Post of Duty personnel to Saipan, CNMI to review investigative files relating to ten (10) homicides which CNMI officials claim to have some relation to drug trafficking. After an extensive review of the investigative case files and interview of the homicides investigators, the final conclusion did not support the claim of the CNMI officials that the homicides were drug related.

October 10 to October 13, 1995

ASAC Hayakawa visited Agana, Guam and Saipan, CNMI and met with various government officials from Guam and Saipan, as well as Federal agency officials stationed in Guam and CNMI to discuss DEA assistance to the CNMI.

October 16, 1995

ASAC Hayakawa reassigned Senior Special Agent (SSA) Jake Fernandez of the Guam Post of Duty, on a full-time basis, to supervise and initiate drug investigations in Saipan, CNMI. Since his reassignment, SSA Fernandez has been working jointly with Saipan DPS and Customs personnel, along with other Federal agencies on drug related investigations. Once the proposal to form an AD-HOC Task Force is approved, SSA Fernandez will be in charge of this Task Force. It is anticipated that SSA Fernandez will spend 90% of his time on a TDY basis in CNMI.

October 30, 1995

DEA's Western Laboratory dispatched three (3) Forensic Chemists to conduct a one day Drug Identification/Certification Training Course in Saipan, CNMI. There were a total of 76 students who attended this course. They were from DPS and Customs personnel from Saipan, Rota, and Tinian.

### SUMMARY AND ACCOMPLISHMENTS (continued):

#### October 31, 1995

Special Agent in Charge (SAC) Robert E. Bender of the Los Angeles Field Division, based on the two separate assessments of the level of drug trafficking activity and composition of the drug traffickers in the CNMI, submitted a written request to DEA Headquarters, proposing to form an AD-HOC Task Force using the remaining funds allocated to DEA by the Department of Interior under Public Law 103-332. The proposal would cross designate and provide Title 21 authority to select law enforcement officers from the Saipan Department of Public Safety and the Saipan Division of Customs. Additionally, the agreement would pay for the overtime for these officers, up to a sum equivalent to 25% of the salary of a GS-10, Step 1, Federal employee per officer per annum and provide funding for the purchase of evidence and information. This proposal was presented, in lieu of opening a DEA office in Saipan, to the Governor of CNMI, the Attorney General of CNMI, and heads of the DPS and Customs during ASAC Hayakawa's recent visit to Saipan. The CNMI officials were very much in favor of the proposal and would want to see this proposal be implemented.

#### November 7, 1995 to November 19, 1995

DEA dispatched three (3) Special Agents from the Office of Training, International Training Section, along with an agent from the Guam Post of Duty to conduct a two (2) week Basic Narcotics Law Enforcement School in Saipan, CNMI. Approximately 45 law enforcement officers attended this school. They were from DPS and Customs personnel from Saipan, Rota, and Tinian.

#### January 31, 1996

On January 31, 1996, DEA approved the formation of the Task Force. On February 28, 1996, Governor Froilan C. Tenorio presided over the official signing ceremony of DEA/CNMI Ad-Hoc Task Force agreement in Saipan, CNMI. Besides Governor Tenorio, Special Agent in Charge Robert E. Bender of the Los Angeles Field Division of DEA, Attorney General C. Sebastian Aloot of Saipan, Chief Jack S. Shimizu of the Guam Police Department, Commissioner Jose Castro of Saipan Department of Public Safety, Secretary of Finance Antonio R. Cabrera (for Saipan Customs), and United States Attorney Frederick A. Black, District of Guam and the CNMI, as well as other Federal and local office heads were in attendance.

Thus far, we have initiated 15 separate crystal methamphetamine drug investigations involving either Korean nationals, Japanese nationals, Filipino nationals or Chamorros (local residents).

#### ASSESSMENT OF THE CURRENT SITUATION:

Crystal methamphetamine is the drug of choice followed by marijuana and continues to be readily available in the CNMI. Crystal methamphetamine being imported into the CNMI from the Philippines and Japan is for local consumption only. Smugglers are using internal body carry to smuggle the drug into CNMI. Crystal methamphetamine is sold on the streets in Saipan by the "plate"; a \$50 plate is for personal consumption, a \$100 plate is approximately 1/5 gram, a \$200 plate is approximately 2/5 gram, and a \$500 plate is approximately 1 gram. Unless you are well known as an established "ICE" trafficker, it is very rare and difficult to purchase an ounce or more of the drug in Saipan. Local businesses, private residents, gambling establishments (pokers rooms) and, Karaoke/bars lounges are known locations to purchase "ICE". Based on actual undercover negotiations, debriefing of confidential sources, and intelligence information, there is no substantial evidence of a truly organized effort to import or transship drugs into the CNMI. Although targeted Japanese nationals are significant traffickers by CNMI standards and have ties to Japanese organized crime (YAKUZA), they appear to be operating independently, primarily for personal gains. There is no one faction that controls or is responsible for the drug and its distribution in the CNMI. Jewelry has been known to be used as a form of payment or used in exchange for "ICE". Property crimes (burglary cases) in the CNMI has a direct correlation to illegal drug activities. There appears to be various distributors who are known to each other and will exchange or sell their "ICE" to one another. However, there are five ethnic groups that are primarily involved in the selling of "ICE"; they are Filipinos, Chamorros, Chinese, Koreans and Japanese. "ICE" is also sold on school grounds to high school teenagers. Approximately one half of the CNMI population consists of immigrant workers from the Philippines and surrounding areas. These alien workers fuel the consumption or need for "ICE" in the CNMI.

#### RECOMMENDATION TO CONGRESS:

The main purpose of the DEA/CNMI Ad-Hoc Task Force is to provide training in drug investigations to local law enforcement officers and to apply what they learn in initiating actual drug investigations. This approach will instill self-confidence to the local law enforcement officers in initiating drug investigations and will make them become self-sufficient. Local law enforcement personnel in CNMI lack the resources, competence and funding necessary to adequately confront the "ICE" problem in the CNMI. This process has just started with the signing of the DEA/CNMI Ad-Hoc Task Force agreement. We would like to assess their progress and provide advanced training in investigative techniques and the utilization of technical equipment. Additionally, prevention and drug awareness education are key components in a successful program. Experience is the best teacher and time will be the best indicator as to our success.

**RECOMMENDATION TO CONGRESS (continued):**

DEA's recommendation would be to continue support and fund this Task Force in the amount of \$250,000 for Fiscal Year 1997. If approved, the additional funds would be used to initiate drug investigations and to purchase technical equipment (i.e., kel-units, binoculars, tape recorders, raid and safety equipment, video and audio equipment, etc.), to aid local law enforcement officers in conducting narcotics investigations. Additionally, the funds would also be used to upgrade their computers and to provide programs for case and confidential source management and to provide additional training in intelligence gathering and interviewing techniques.



---

Washington, DC 20534COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
CORRECTIONAL REVIEWU.S. Department of Justice  
National Institute of Corrections  
March 25, 1996

Since the initial meeting in Saipan on November 1 and 2, 1994, the National Institute of Corrections (NIC) has worked with the Commonwealth of the Northern Mariana Islands (CNMI) and federal criminal justice and law enforcement agencies to provide correctional expertise and assistance. The \$50,000 transfer from the Department of Interior enabled NIC to complete an assessment of CNMI's corrections services and future needs and to provide limited technical assistance and training.

## BACKGROUND

February 6 through 10, 1995

NIC officials completed an assessment of CNMI's correctional programs and future needs. All correctional facilities were visited. In addition to working closely with Public Safety personnel, we met with the Lieutenant Governor, legislators, juvenile authorities, immigration officials, citizen groups, the resident federal judge, and federal, state, and territorial officials in CNMI, Guam, and Hawaii. The overall impression was that there was little or no knowledge that correctional expertise existed. There was a consensus that change was needed.

July 31 through August 4, 1995

NIC officials returned to Saipan to present a modified Correctional Management Training Program with special emphasis on creating policy and procedures. The training was well attended by top officials from Public Safety, Immigration, Customs, and the Governor's Planning Group. Before the end of the week, five correctional policies and the procedures had been developed and written. Also, this week was used to identify what would be needed for an action plan for corrections.

## FINDINGS

In CNMI, adult corrections is located organizationally within the Department of Public Safety. There is a Corrections Division with a Corrections Director. Public safety officers are assigned as needed to corrections; none are permanently assigned to corrections. Correctional facilities are located on three of the islands - Saipan, Tinian, and Rota. These facilities consist of:

- a detention facility (unsentenced) (Saipan)
- a jail (sentenced) (Saipan)
- a women's unit (sentenced and unsentenced) (Saipan)
- a work release unit (Saipan)
- police lock-ups (Tinian, Rota)

The facilities in Saipan are adjacent to each other, creating a small correctional complex.

Juvenile offenders are handled by Youth Services. A juvenile facility has been closed for repairs. Although the repairs are near completion, the opening may be delayed for lack of operating funds and community resistance. If Youth Services needs to house a juvenile, the individual is housed in a local hotel. No juvenile was in that level of supervision during any of our visits.

There is no immigration holding facility. If the need arises, the individual is held by Public Safety. There is no policy or procedures for handling juvenile immigrants or immigrants with minor children.

The U.S. Marshals Service has a contract with CNMI to house federal prisoners, when needed.

The following are some additional findings from NIC's assessment, made during our first visit and reconfirmed during the second visit:

- Correctional services in CNMI do not meet the American Correctional Association's Standards, the United Nations Standards, or any other professional correctional standards.
- Jails and prisons have experienced court interventions for similar conditions of confinement or operating practice.
- The population appears to range from 70 to 130 inmates.
- There is very limited use of inmate counts as a security tool or to develop baseline, management data.
- Although public safety employees receive public safety and related police training, no jail or prison related training is provided. Most staff have not seen any other jail or prison operation.

- There is no inmate classification system. Inmates are housed where there is a vacant bed or space.
- Women are housed separately. (There has been, at least, one lawsuit concerning a possible exception to this rule.)
- Seven to nine public safety officers are usually assigned to correctional duties per shift. There is limited documentation of these work assignments.
- There appears to be no post (duty) assignments for staff within the facility.
- There is almost complete inmate idleness. There is little or no inmate programming (educational, work, or recreational).
- All of the facilities (buildings) are inadequate. There are issues of life safety, health and sanitation, security, and overall general repair that affect both staff and inmates in all the structures.
- The design and conditions of the facilities make renovations prohibitive.
- Inmate medical screening and services appear to be inadequate.
- Food services are contracted out to a private business.
- There appears to be little or no documentation of correctional activity, except by word-of-mouth.

Perhaps the most positive finding has been that management within Public Safety has been open to acquiring more correctional expertise and initiating change.

#### ASSESSMENT OF THE CURRENT SITUATION:

The major issue continues to be facility construction - How to get the funds? Where should it be built? At one point, 168 acres had been identified as the site by the CNMI government. Then, it was reduced to 6 acres. At this moment, no one in the CNMI government can or will confirm anything, except that it is a priority issue.

In the meantime, NIC is arranging for the placement of CNMI officials into its own training programs as well as other training efforts, setting up site visits to model correction programs when CNMI officials are traveling, and providing information, sample programs, and core curriculum to CNMI officials.

The next on-site training is scheduled to be the development of an inmate classification or planning for a new institution.

## RECOMMENDATIONS TO CONGRESS:

The National Institute of Corrections' recommendations are:

1) New facilities are required. Funding for this purpose and site selection must be made a priority. If this is not done, funds will be expended in attorneys' fees, court costs and judgements, and court-ordered solutions.

2) New facilities are not automatically equipped with trained staff and inmate programs and services. Every aspect of corrections needs to be reviewed, policies and procedures developed and updated, and staff identified and trained. Much of the change that is needed needs to be built upon change. As the system grows and becomes more sophisticated, the initial programs will need to be enhanced. \$100,000 a year for the next four to five years will be needed to provide for staff training and technical assistance to improve correctional management and develop and implement inmate programs and services.

With the continued economic development on Saipan, Tinian, and Rota, these correctional issues will only worsen. Additionally, the need for immigration holding and detention space appears to heighten the need for action.



**INS Report to the Department of the Interior  
Concerning the Commonwealth of the Northern Mariana Islands  
March 22, 1996**

**I. Summary of recent activities in the Commonwealth of the Northern Mariana Islands (CNMI)**

The Immigration and Naturalization Service (INS) has monitored immigration-related events in the CNMI by several means:

- o A contingent of INS officers visited the CNMI in February to examine immigration practices and to assess progress of the CNMI regarding immigration issues. This group included the INS Assistant District Director for Examinations, Honolulu, Hawaii; the INS Officer-in-Charge, Agana, Guam; and a representative from INS Headquarters Office of Information Resources Management (IRM). Issues discussed included:
  - Development of the CNMI's Labor and Immigration Identification Documentation System;
  - Airport arrival and departure control;
  - Immigration removals from the CNMI (process and funding);
  - CNMI rules applying to temporary workers.
- o The INS has selected an experienced investigator to be stationed for two years in the CNMI, with a target date for entry on duty of early May. He will be supervised by the INS Officer-in-Charge, Agana, Guam. Among his duties will be:
  - To assist the Assistant U.S. Attorney in Guam in immigration enforcement activities;
  - To conduct training and mentoring of CNMI immigration staff;
  - To assist in the coordination of CNMI immigration and labor departments in implementing effective systems and business practices;
  - To represent the INS in the CNMI;
  - To report on topics of immigration concern, both to the CNMI and to the INS;
  - To assist Federal and local law enforcement agencies in planning and conducting investigations and other initiatives.
- o The INS Office of Information Resources Management (IRM) has provided technical assistance to the CNMI to facilitate development of a computerized system to support immigration processes. To date, that assistance has been monthly telephonic consultation, including conference calls with various staff present, regarding development methods, data element content, and system components. The INS plans to conduct an independent validation and verification of the CNMI's system as it progresses, and to make recommendations for optimal system effectiveness. (Attached is a synopsis of IRM findings during the February on-site review.)

## II. Assessment of immigration developments in the CNMI

The INS will have an officer on duty in the CNMI beginning in May to assess CNMI immigration issues. INS officials detailed to the CNMI have made the following observations and assessments:

- o The CNMI is making some qualified progress on several immigration problems, including:
  - Development and implementation of a computerized system of immigration processes (see IRM report attached);
  - Implementing an arrival-departure process;
  - Removing unauthorized aliens from the CNMI;
  - Using safeguards on security documents and protecting computerized systems from unauthorized changes to the database;
  - Issuing tamper-resistant documentation for temporary workers;
  - Refusing entry and removing persons who fail to meet entry requirements;
  - Improving the immigration department's effectiveness by re-engineering their processes and hiring effective personnel.

## III. Other issues

- o The CNMI must become much more effective in deporting immigration law violators, as well as aliens who violate other laws. When the CNMI is better able to identify persons through an expanded database of its temporary workers, law enforcement will become more effective. The current temporary worker data base contains about 14,000 entries. Funds must also be set aside to carry out deportations.
- o Detention facilities, both long term and short term, will need to be improved before CNMI authorities can undertake any significant enforcement initiatives to expel unauthorized persons.
- o The current lack of detention space that meets federal standards does not prevent CNMI authorities from refusing entry to unqualified persons. Currently the CNMI does return some individuals on the next available flight when they do not meet entry qualifications. This screening should be encouraged and fully used.
- o The INS considers implementation of a computerized arrival and departure system to be the first priority for the CNMI immigration service in regaining immigration control. Though funds were allocated for this purpose, progress has lagged due to contract support problems. Arrival and departure control is a part of the overall support system planned. The first part of a system implemented has been a prototype for processing applications and controlling entry of temporary workers. It is important to the effectiveness of the CNMI immigration service that development of the labor and immigration identification and documentation

system continue at as rapid a pace as possible.

- o The differences between INS and CNMI immigration laws have different kinds of impact in different areas. For example:
  - The INS does not believe that CNMI immigration problems directly impact the security of other parts of the United States, in that persons traveling legally from the CNMI to Guam or elsewhere in the United States must go through INS inspection before they are admitted.
  - Though persons traveling from the CNMI to the United States must go through INS inspection, smuggling of persons from the CNMI to the United States may occur, if persons leaving the CNMI succeed in entering the United States at a location other than a designated Port-of-Entry.
  - The CNMI immigration statutes have some impact on lawful permanent residents of the United States who reside in the CNMI. For example, lawful residents must register to work legally in the CNMI, and while residing in the CNMI, are not considered to be residing in the United States, which could lead to loss of permanent resident status.
  
- o The INS and the Department of Justice have not taken an official position on extending the Immigration and Nationality Act (INA), in whole or in part, to the CNMI. In testimony given before the House's Native American and Insular Affairs Subcommittee on January 31, 1995 the INS General Counsel reviewed a number of considerations pertaining to this question. For example, extending the INA to the CNMI:
  - Would render a majority of the current temporary workers in the CNMI illegal and amenable to deportation;
  - Could lead to greater and more permanent immigration to the CNMI; and
  - Would divert INS resources to the CNMI at a time when demands on these resources are already very great.

## INS Report on the Development of the

### CNMI Labor and Immigration Identification and Documentation System (LIIDS)

#### Activities and accomplishments in the CNMI over the past year

INS IRM has been attempting to support CNMI's development of their Labor and Immigration Identification and Documentation System (LIIDS). The DOJ-DOI Interagency Agreement specifies that INS will perform an Independent Validation & Verification (IV&V) of CNMI's LIIDS development products, which involves review and constructive critique of deliverable documents and system components throughout the development process - the System Development Life Cycle (SDLC). IRM has received some preliminary development information and commented with recommendations; however, we have not yet received any complete, final SDLC documents on which to perform IV&V. Coordination and recommendations are being provided to CNMI's LIIDS Project Team during their activities to conduct the development.

Systems and data bases built by CNMI should have future compatibility with INS, should there be a need for information interchange. CNMI and INS are endeavoring to accomplish this by comparing data dictionaries, to assure that data elements used by the CNMI match or are readily convertible to INS formats.

In February, INS traveled to the CNMI to meet with a team of Federal officials, congressional staff, and local government officials to do on-site follow-up on the progress of the joint Federal/CNMI labor, immigration and law enforcement initiative. Discussions encompassed LIIDS project management and progress to-date, SDLC employment, CNMI's current immigration processes and functional requirements, and planned actions for modernization, through re-engineering with incorporation of LIIDS. The Governor of the CNMI, commensurate with his overall strong sponsorship of Immigration and Labor reform initiatives, has given particular attention to the development of automated support to be fully integrated with the re-engineered processes. The LIIDS Project Manager has been given direction to proceed with priority development. The LIIDS Project Team has been involved in determination and documentation of immigration and labor process and support system requirements, as well as procurement of some equipment and software, development of software, and establishment of a demonstration or prototype system capability for processing of data in the initial step of a re-engineered immigration and labor process.

The prototype operational capability provides for (1) the capture of basic individual non-immigrant identity, labor and immigration data, relating individuals to specific employers who are sponsoring them to work in the CNMI, (2) building of a standard data base of that information, (3) issuance of an entry permit/letter, to be used by the employee and employer to verify status for the individual's initial entry into the CNMI, and (4) issuance of an associated ID card for each worker. The first two steps are currently operational and the latter two expected to be implemented within two months. This prototype provides a basic capability for the first part of an immigration control process and,

secondarily, provides a valuable learning tool to facilitate understanding and definition of requirements, in order to develop the complete, final operational capability LIIDS.

#### **Assessment of current situation**

Progress of the project has been sporadic and limited, due primarily to the lack of support staff and sustained contract support. There have been two unsuccessful attempts to establish contractor support for conduct of a thorough SDLC, which is needed to plan and initiate a sound project to comprehensively define immigration (and labor) process and support system requirements and to develop, implement and operate the new LIIDS. There have been local and Federal political pressures for results, which have driven the project toward establishing the limited initial capability as a priority, leaving less time for the conduct of a proper SDLC.

Many of the existing CNMI immigration (and labor) processes are ill-defined, if at all. Very little automated data processing has ever been employed and there is limited integration of processes. The Project Team understands that these need to be comprehensively defined in conjunction with the immigration and labor operations managers and specialists who are the users. There is strong commitment from the CNMI Government managers and key personnel to define their functional processes, reorganize them into more effective ones and take the steps necessary to develop improved procedures, forms, and the associated LIIDS support. A copy of The Labor Permit Application Process document, prepared by the Labor component of the LIIDS Project Team, was provided as an example of process analysis and redefinition to be undertaken by the Project Team and related operational managers. The goal will be an integrated immigration and labor control and facilitation process, with LIIDS as the automation support tool.

The CNMI has not adopted or developed a SDLC process of their own. It was planned that the contractor would introduce the SDLC process, along with the system they were to develop. That did not work. INS has now provided the CNMI Project Manager with a copy of INS SDLC, for their adoption. The INS SDLC is comprehensive and should provide a good education tool, as well as reference document to be employed for the Commonwealth.

#### **Recommendations**

The CNMI Project Manager must be given the authority to go with the responsibility. INS IRM recommends emphasis first be placed on establishment of a complete project plan. The plan should include the definition of the Project Manager's responsibility, reflect SDLC tasks and schedule, and clearly identify required support actions from budget and finance, procurement and other identified organizations (CNMI and Federal).

CNMI and DOI must commit priority support to the plan and its component tasks.

INS should continue to provide consultant support. Much of the INS support will take place through the on-site INS Officer. Support to LIIDS development should continue to be direct between the

CNMI Program Manager/Team and INS Headquarters IRM. Comprehensive project reviews should take place quarterly.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS  
CNMI Report

The United States Attorney's Office ("USAO") in Saipan now has two full-time attorneys (previously it had only one). In addition to handling criminal and civil cases, including appeals, the USAO provides temporary space for TDY investigators, task force personnel working on federal matters, TDY attorneys from the Department of Justice, the United States Department of Labor, and the National Labor Relations Board. The USAO presently has only one secretary, who performs both administrative and secretarial duties, and it is currently trying to recruit a second secretary.

The USAO is continuing to respond to the build-up of investigators resulting from the federal law enforcement initiative. These include one additional FBI agent, one DEA agent who has been assigned to spend a significant portion of his time in the CNMI, regular TDY visits from United States Postal Service and Secret Service agents stationed in Hawaii, ATF agents stationed in Guam, two Fish and Wildlife agents stationed in Guam, and one on-island United States Customs officer assigned to task force and educational duties. One officer from the Immigration and Naturalization Service has been designated for full-time duties in the CNMI. In addition, the United States Marshal Service has added one additional full-time deputy (for a total of two Deputy United States Marshals) to handle the increased movement of federal prisoners and to aid in security duties.

The immediate and expected result of the federal law enforcement initiative has been to increase the number of criminal cases. In the first five months of Fiscal Year (FY) 1996, the USAO has filed almost as many new criminal cases, 12 cases filed against 22 defendants, as were filed in all of FY 1995, where 14 cases were filed against 19 defendants. Criminal matters (agency referrals under investigation) have risen with the number of new agents, reaching 21 matters against 30 defendants in the first 5 months of FY 1996, compared with 22 matters against 21 defendants in all of FY 1995. On the civil side, in the first 5 months of this year, the USAO has filed or answered in 3 cases and received 15 matters, compared with filing or answering in 10 cases and receiving 11 matters in FY 1995.

Most of the criminal cases have been resolved through guilty pleas or other dispositions. A recent example is an international drug trafficking case involving five defendants of various nationalities that was investigated by the FBI, DEA, and the CNMI Customs agency. Other examples include two DEA-investigated cases involving conspiracy to possess and distribute methamphetamine, as well as several United States Postal Service-investigated cases involving postal burglary, mail theft, and obstruction of the mails. Presently, all federal investigative agencies in the CNMI have ongoing investigations, including white collar crime

investigations for which indictments are expected in the near future.

Finally, both FBI and DEA are forming joint task forces involving Guam police officers who are specially designated as DEA agents, as well as involving local CNMI officers from all branches of CNMI law enforcement, including customs, immigration, and the Department of Public Safety. These task forces are designed to enhance federal/local coordination and consultation, and to increase the number of prosecutable cases by the USAO.



## UNITED STATES MARSHALS SERVICE

The Commonwealth of the Northern Mariana Islands

Status Report  
March 20, 1996

ISSUE:

A significant Federal law enforcement and prosecutorial initiative is underway in the Commonwealth of the Northern Mariana Islands (CNMI). Saipan, Rota, and Tinian are the three islands that comprise the CNMI. The U.S. Marshals Service (USMS) office is located on Saipan.

The initiative is principally funded by the Department of Interior (DOI) and involves the Department of Justice (DOJ), the Department of Treasury, and the Department of Labor as its principal participants. The chief targets of the initiative are participants in, and perpetrators of, labor and immigration crimes in the CNMI. A major segment of the effort involves the investigation, apprehension, and prosecution of drug traffickers and violators who are integrally involved in the labor and immigration crimes being addressed.

HUMAN AND MATERIAL RESOURCES:

The USMS currently has one additional, DOI funded, deputy U.S. marshal (DUSM) in place on Saipan. The position was approved and funded to enable the USMS to meet the increased Service requirements generated by the initiative, which have materialized as originally projected.

Thus far, the addition of the DOI funded DUSM position in Saipan allows the Marshals Service to adequately address the actual increases in requirements that are currently being generated. Absent the DOI funded position, however, the Marshals Service would be significantly constrained from providing the level and quality of services USMS customers in Saipan deserve. As the initiative increases in prosecutorial speed, projections indicate that USMS requirements will increase commensurate with prosecutorial cases.

Therefore, the funding levels, which were originally obligated for the placement of a second DOI funded DUSM position in Saipan should be continued for the duration of the initiative. In addition, increased workload levels will require either an additional \$65,000 a year for anticipated contract guard service or a third DUSM position. Contract guards will be used to assist USMS personnel in courtroom prisoner productions, prisoner movement, and prisoner custodial requirements. On a yearly or short-term basis, the anticipated increase in Service requirements can be adequately addressed through the contracting of "guards" to support the two DUSMs currently positioned on Saipan. Absent the additional "guard" hire funding, one additional or a third DUSM position will be required.

DETENTION SERVICES:

On this issue, the initiative's partners strongly concur that a major intervention is required to provide Saipan with an adequate detention facility.

The USMS currently has 6 Federal prisoners in custody in the Northern Marianas. Those prisoners are housed in a detention facility managed by the CNMI Department of Corrections on Saipan. The facility does not meet Federal standards and is in danger of being shut down by the Federal Courts. The existing facility houses approximately 170 inmates including females and those charged as DUIs. Several concerns must be faced: the facility has serious security problems; it lacks interview rooms; it is without medical facilities;

it uses temporary hoses to supply water to baths; cell cots are constructed of smoothed down concrete block; and there are no toilets in individual cells.

Furthermore, a \$40 million dollar territorial courthouse is under construction (across the street from the detention facility). This new courthouse facility will probably result in increased prisoner activity, straining an already inadequate detention facility.

The USMS has made arrangements with the Department of Corrections in Guam to provide bed space for CNMI Federal prisoners under a cooperative agreement. A 92-bed pre-fab detention facility is currently under construction in Guam. The Federal Courts in CNMI have agreed to allow video-conferencing between CNMI prisoners housed in Guam and attorneys located in Saipan. Housing Federal prisoners for the CNMI in Guam, however, is only a temporary solution.

The USMS supports the National Institute of Corrections proposal to replace the existing detention facility on Saipan; CNMI is in need of a 200-bed detention facility to replace the existing substandard facility. It is recommended, however, that controls be put in place to limit the use of funds solely for the detention facility construction. The USMS would require 4-6 beds for Federal prisoners in a new CNMI detention facility in Saipan, and would no longer require bed space for prisoners in Guam.

#### SUMMARY:

The USMS requires continued funding for two (2) FTE deputy U.S. marshal positions on Saipan. In addition, either \$65,000 will be needed for contract guard service or one additional DUSM position will be required to meet increased workload requirements.

## Memorandum



47

REPORT TO DOI FROM CRIMINAL SECTION, CIVIL RIGHTS DIVISION  
APRIL 3, 1996

Since the inception of the CNMI/DOI initiative, the Criminal Section of the Civil Rights Division has been prepared to review any and all allegations of potential violations in the CNMI of the federal criminal civil rights statutes. Our Section's efforts in pursuing potentially prosecutable criminal civil rights matters were dependent on first learning of allegations of such violations, and on having an assigned case agent of the FBI on-island with whom we could work on criminal civil rights matters.

The FBI's assigned agent arrived in the CNMI in October, 1995. As we awaited his arrival there, we also wrote to several persons with whom our colleagues in the Employment Litigation Section had had contact during their work in the CNMI (the litigation culminating in United States v. The CNMI et al., civil litigation brought on behalf of Philippine national educators who had suffered racial discrimination in the CNMI school district) in order to solicit any allegations of which they might be aware which could implicate the federal criminal civil rights law. Despite these efforts, we have learned of only one incident for which full investigation could be authorized; that matter is currently under investigation by the FBI in the CNMI and concerns allegations of excessive force used by officers of the Department of Public Safety on Rota.

In order to increase this Section's ability to review allegations of potential criminal civil rights violations in the CNMI, we have now instituted a plan by which this Section will be made aware by the FBI not only of those allegations which, according to on-island review, may warrant investigation as a violation of the federal criminal civil rights statutes, but also of any and every inquiry received by the FBI from any source since the arrival of the assigned agent in October, 1995. In this way, we hope to be able to bring to the review of such allegations not only the investigating agent's expertise, but also the criminal civil rights attorney's evaluation of those allegations which could, by further investigation, lead to the discovery of a

prosecutable offense. We will obtain that material and review it, and will have obtained and evaluated the investigation report in the excessive force incident described above, by the end of May, 1996. At that time (in late May/early June), a Senior Criminal Section Attorney will travel to the CNMI to discuss with the FBI agent and with representatives of the United States Attorney's Office the material we will have reviewed and we will conduct further investigation toward preparing any suitable matter for grand jury presentation. If by the date of that trip there still does not exist a potentially prosecutable allegation, the Section Attorney will work with the agents and Assistants in the CNMI on doing additional work in order to learn of a prosecutable allegation.

At this time, because the Section's work on-island has not yet taken place, we have no funding recommendations to make. Also, because our work concentrates on the investigation and prosecution of federal criminal civil rights violations, we have no specific responses to the issues outlined in Director Stayman's letter.

FEDERAL BUREAU OF INVESTIGATION

The Federal Bureau of Investigation (FBI) entered into an agreement with the Department of Interior to provide additional law enforcement support for the Commonwealth of the Northern Mariana Islands (CNMI).

The FBI had two Special Agents assigned to the CNMI who are dedicated to investigating violations of federal criminal statutes, including, but not limited to, public corruption, organized crime/drug matters and white collar crime offenses. As a result of the initiative, the FBI assigned an additional Special Agent to the Saipan Resident Agency, which brings the total staffing of the Saipan Resident Agency to three FBI Special Agents. The criminal investigative priorities of the third Special Agent will be the investigation of civil rights, public corruption and organized crime matters.

The FBI has initiated contacts with various community support groups and local law enforcement agencies and has advised them of the scope of the federal interest in civil rights matters. This liaison has resulted in the increased awareness of the nature of these crimes and several specific inquiries have been directed to the local office. The FBI continues to receive inquiries in this area and will promptly examine the facts and circumstances and advise the U.S. Attorney's Office and the Criminal Section of the Civil Rights Division, Department of Justice to determine the likelihood of federal criminal prosecution and, when warranted, will investigate any and all credible allegations of violations of federal civil rights statutes.

The FBI has also met with the Commissioner of the Department of Public Safety who has offered his agency's full support and assistance in the investigation of civil rights violations involving members of the Department of Public Safety. And, the Commissioner is implementing plans to increase and improve the Civil Rights training for CNMI public safety officers.

With the increased presence on Saipan of other Federal law enforcement agencies, other criminal matters which usually come to the attention of the FBI are being referred to these agencies. Accordingly, the FBI has been able to concentrate its efforts in the investigation of white collar, organized crime/illegal drugs, public corruption and civil rights matters. This concentration of investigative expertise to these areas has recently resulted in the prosecution of several members of a major drug trafficking group with Japanese organized crime connections. The investigation and subsequent prosecution was made possible by the coordinated effort between the U.S. Attorney's Office, FBI, Drug Enforcement Administration, Bureau of Alcohol, Tobacco and Firearms, U.S. Marshal's Service, and

local law enforcement. As a result, other major cases will be handled utilizing the task force concept.

At this time, established funding levels are sufficient to address current investigative needs.

CHILD EXPLOITATION AND OBSCENITY SECTION  
STATUS REPORT ON CNMI INITIATIVE

This is the first report of the Child Exploitation and Obscenity Section (CEOS) of the Department of Justice for the Federal Task Force on the Federal-CNMI Labor, Immigration, and Law Enforcement Initiative.

The CEOS has the supervisory responsibility for federal statutes covering obscenity, child exploitation, child sexual abuse, and activities under the Mann Act. Mann Act statutes include the interstate or foreign commerce aspects of criminal sexual activity involving: a) the transportation of an individual, b) the persuasion, inducement, enticement or coercion of an individual to travel, c) the transportation of a minor, or d) travel by an individual for that purpose. CEOS is interested in prosecuting individuals who transport, or conspire to transport, young women to the CNMI for purposes of criminal sexual activity, including but not limited to prostitution. CEOS is also interested in the prosecution of individuals who travel to the CNMI to engage in criminal sexual activity, including but not limited to prostitution.

As a preliminary step to undertaking prosecutions, we have been conducting extensive interviews with federal government personnel in both the CNMI and Guam. The interviewees have included representatives of the Departments of Interior, Justice, and Labor, many of whom have provided information regarding the transportation of women and travel to meet women in violation of the Mann Act. Each interviewee has provided different perspectives on the breadth of this problem and the resources which will be necessary to address it.

CEOS expects to complete the preliminary phases of this project within the next few weeks. At that time, CEOS will develop a strategy to initiating investigations leading to prosecution of the individuals organizing these criminal activities. CEOS has been assured that resources will be made available within the Department of Justice to assist in the cases. Our present concerns are leads for the initial cases, focusing particularly on young victim witnesses.

CEOS looks forward to continued work with the Federal Task Force on the Federal-CNMI Labor, Immigration, and Law Enforcement Initiative.

# **U.S. Department of Treasury**

**United States Secret Service  
United States Customs Service  
Bureau of Alcohol, Tobacco, and Firearms**





DEPARTMENT OF THE TREASURY  
UNITED STATES SECRET SERVICE

53

March 20, 1996

Department of the Interior  
Office of Territorial and International Affairs  
1849 C Street, NW  
Washington, D.C. 20240

ATTN: Debbie Subera-Wiggin

Dear Ms. Subera-Wiggin:

Reference is made to the correspondence of Director Allen P. Stayman, Office of Insular Affairs, dated March 8, 1996, in which his intention to provide Congress with a brief report regarding enforcement efforts in the CNMI is discussed.

None of the specific issues outlined by Mr. Stayman directly correlate with the primary investigative responsibilities of the United States Secret Service. However, we believe that our previously submitted quarterly reports provide a good overview of the Service's accomplishments in the CNMI, both in the enforcement of our core violations and as an active participant in the CNMI Interagency Task Force.

The information presented below will update your office on Secret Service efforts in the CNMI during the period of December 15, 1995, through March 15, 1996:

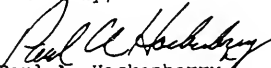
- For most of the first quarter of this year, we were able to provide a full time presence in Saipan. During this period, Special Agent J. DeSantis participated in two major task force investigations which culminated in three arrests.
- The first investigation resulted in the arrest of an individual for violations of 18 USC 1344 (Bank Fraud), 18 USC 1702 (Obstruction of Justice) and 18 USC 1708 (Theft of Mail).
- The other significant investigation resulted in the arrests of two individuals for violations of Title 21, Section 841 (Possession with Intent to Distribute Dangerous Drugs) and Title 21, Section 860 (Manufacture or Possession of Dangerous Drugs On or Near a School).

- Three bank fraud referrals have been received from the Bank of Guam, and are being investigated by one of our agents who returned to Saipan on March 12 (he will remain at least until April 5). During that time, he will be presenting a case for prosecution to AUSA Fred Black; will conduct Secret Service business, and will participate in Interagency Task Force efforts.

In terms of our view of future participation (which you requested), it has been our experience that the number of violations directly impacting upon Secret Service jurisdictional responsibility do not justify a full-time presence on the island. In this age of limited resources, we would normally rotate an agent through Saipan some two weeks out of every two month period, deploying that agent to other regions also demanding some Secret Service presence. However, we will continue to participate in Task Force efforts and to support the Federal-CNMI Labor,, Immigration and Law Enforcement Initiative to the extent possible.

Should you have any questions or require additional information, please feel free to contact Assistant Special Agent in Charge Ray Dineen of this office at (202) 435-5716.

Sincerely,

  
Paul A. Hackenberry  
Assistant Director of  
Investigations



## DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

HONOLULU, HAWAII

March 20, 1996

Mr. Allen P. Stayman  
Director  
Office of Insular Affairs  
U. S. Department of the Interior  
Washington, D. C. 20240

Dear Director Stayman,

In response to your letter dated March 8, 1996, requesting an overview of our agency's activities in the CNMI, enclosed please find a summary of action taken to date as well as an assessment of future needs to continue our role in the CNMI initiative. For your information, the U. S. Customs Service, Office of Investigation, has had TDY representatives on site in Saipan since October 1995 when our agency first received funding from your Department.

U. S. Customs has been the impetus in establishing a U. S. Treasury Task Force in the CNMI. The Task Force will consist of one or two U. S. Customs Special Agents and officers from the CNMI Department of Public Safety (DPS) and CNMI Customs. Other Treasury agencies (BATF and U. S. Secret Service) will be represented on an "as needed" basis. Space has been identified and modifications are currently underway on the 4th Floor of the Horiguchi Building to house the Task Force members. In November 1995, Memorandums of Understanding regarding the assignment of CNMI law enforcement officers to the Task Force were submitted to CNMI officials. To date, these MOU's have not been signed as they are currently under review by the CNMI Attorney General.

The primary objectives of the U. S. Customs Service in the CNMI initiative include:

1. Investigation of illicit drug trafficking across the CNMI border, both import and export. The international airport, seaport, U. S. Mail and courier services will be targeted.
2. Investigation of violations of the Arms Export Control Act, Bank Secrecy Act and applicable money laundering statutes.
3. Investigation of the illegal transshipment of textiles from the garment factories.
4. Gather and report violations of CNMI and USCS laws and

REPLY TO: SPECIAL AGENT IN CHARGE, P.O. BOX 30104, HONOLULU, HAWAII 96830

regulations that will result in effective prosecution before the courts of the United States and the CNMI.

Since October 1995, a total of ten investigations have been initiated in support of our enforcement efforts in the CNMI. The investigations have centered on violations of the narcotics laws, transit of suspected Japanese Organized Crime members, importation of counterfeit U. S. Currency, and potential OFAC violations. To date, these investigations have resulted in the arrests of 5 individuals and the seizures of counterfeit currency, unregistered firearms and drug paraphernalia.

To help combat the drug and firearms smuggling activities of Japanese Organized Crime, the U. S. Customs Attache, Tokyo is working with Japan's National Police Agency to improve communications and the exchange of information between Japanese officials and the law enforcement agencies in Saipan. On January 22, 1996, a NPA Detective Superintendent traveled from Japan to Saipan to discuss current cases in Saipan involving members of the Japanese Organized Crime.

U. S. Customs is sponsoring, in conjunction with CNMI Customs, a training seminar March 22, 26 and 27, 1996, at the Saipan Diamond Hotel for an estimated 150 local and federal law enforcement officers. The seminar will be presented by a U. S. Customs Senior Special Agent from the Federal Law Enforcement Training Center in Georgia and will focus on safety and mental preparation for armed confrontation in the law enforcement field.

From April 8-19, 1996, U. S. Customs is sending a four person training team of U. S. Customs officers from Honolulu, Hawaii to work with the CNMI Customs Division. The purpose of the training team is to evaluate, train and to assist them in the following areas:

- (A) Airport operations, passenger inspection and analysis of airline passenger manifests.
- (B) Seaport operations and cargo inspections
- (C) Canine operations

In October 1995, U. S. Customs received \$150,000 (combined from FY 95 and 96) in funding from your Department. To date, approximately \$110,233 (73.5% of the available) has been expended by our agency in support of the project. The major cost has been for travel and per diem expenses (\$102,304 obligated to date out of the budgeted \$120,000 for the year). These costs add up quickly when one considers that they include the rental of vehicles estimated to be \$28,800 per year and the daily per diem

amount of \$228. Since one agent has been detailed to the CNMI since December, airfare charges have been minimal. It should be noted though that at the current rate and without additional reimbursements, U. S. Customs will not be able to keep an agent TDY in the CNMI for the remainder of the fiscal year. It is estimated that an additional \$25,000 will be needed to fund TDY expenses in FY 96.

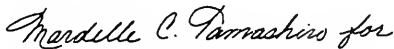
Attached for your review is a current budget analysis of the expenses for the project to date. The travel expenses have been obligated for travel through May 9, 1996. It should be noted that expenses for rent, telephone and utilities have been minimal to date because the commercial space is not yet ready for occupancy. It is believed that it will cost approximately \$1,000 per month for these expenses, primarily long distance charges for the computer linkage to our main system.

Based upon current projections, it is believed that U. S. Customs will need approximately \$180,000 to continue the CNMI program in FY 97. With start-up costs (such as furniture and equipment) already taken care of, most of the funds should be allocated to keeping an enforcement agent(s) on site in the CNMI to work with the local agencies.

Assuming that additional funding becomes available in FY 97, Customs is once again prepared to support the initiative with temporary details from Honolulu and Guam. It is believed that more work can be done to enhance the enforcement efforts in the labor area by concentrating on investigations of the garment industry and the transshipment of textiles products through the CNMI. Customs and Immigration have historically worked hand in hand as the front line of defense to protect the borders from people, prohibited items and merchandise injurious to its citizens. By going out front with training this fiscal year, it is hoped that the border process will be more efficient starting in FY 97.

Although the start of the project was delayed due to budgetary concerns, we at U. S. Customs are committed to being a long-term player in the ever-important law enforcement initiative in the Commonwealth of the Northern Marianas Islands. Please feel free to contact our office at (808) 541-2623 if you have any questions or if we can be of further assistance.

Sincerely,

  
WALTER W. COLLETTE, JR.  
Resident Agent in Charge

Bureau of Alcohol, Tobacco and Firearms  
Commonwealth of the Northern Mariana Islands  
Activity and Funding Request Report  
March 25, 1996

The following is an activity report regarding the Commonwealth of the Northern Mariana Islands (CNMI) for the period January 1, 1996, to present. This report is being submitted to document the activity of the Bureau of Alcohol, Tobacco and Firearms (ATF) in the CNMI, relating to the reimbursable support agreement between ATF and the Office of Territorial and International affairs, United States Department of the Interior. This report is also for the purpose of transmitting a funding request for assistance provided by ATF to the CNMI over the next year.

ATF continues to investigate several matters in the CNMI. Our agents from ATF Field Offices in Guam and Honolulu have continued to provide assistance to the CNMI over the last year which has resulted in several cases targeting an armed career criminal, numerous armed drug traffickers, and a case which is attempting to determine the source of illegal explosives.

One case involves a convicted felon who was found in possession of explosives in the village of Afetnas, Saipan. The defendant was indicted on May 4, 1995, for possession of explosives and has pleaded guilty to this same count on June 16, 1995. As of this date, he has not been sentenced due to his cooperation in providing additional criminal information to the Federal Bureau of Investigation as part of his plea agreement.

As previously stated in the last quarterly report, a subject who was found to be in possession of a pen gun and ammunition on Saipan has not yet been indicted due to an interstate commerce issue with the pen gun. The U.S. Attorney therefore has tentatively offered a plea agreement to the defense with respect to not including the armed career criminal statute to the possession of a firearm charge. Instead, the U.S. Attorney is offering in exchange a guilty plea for a two year prison term. ATF in Guam was recently notified that this same subject was arrested again on or about March 8, 1996, on Saipan, for possession of another firearm and ammunition.

This subject, will be charged, under the armed career criminal statute for this second incident.

Another investigation reported in the last update involved an individual carrying or using a firearm during a drug trafficking offense. This case is continuing.

Three Japanese nationals were recommended for prosecution after their arrest on Saipan for possession of firearms and narcotics. The prosecution in this case is pending while court records and fingerprints from a previous conviction are being obtained from a foreign court through Interpol.

Another individual found in possession of a firearm on Saipan is to be indicted some time in March 1996. This case also involves the armed career criminal enhancement.

The multi-agency task force investigation is still continuing which is targeting illegal narcotics traffickers in the CNMI and it is anticipated to last several months.

ATF continues to trace firearms recovered by the CNMI Department of Public Safety, and all investigative leads are being pursued.

Plans are still under way for ATF to conduct a two week undercover and tactical training session in Guam during FY 96. This training and funding are being arranged through ATF training at the Federal Law Enforcement Center in Glynco, Georgia.

ATF continues to be a vital participant in the Inter-Agency Task Force and in February attended the Department of Interior meeting on Saipan concerning CNMI.

ATF has also met with the Japanese Police and Customs concerning firearms trafficking between Guam, Saipan and Japan.

#### FUNDING PROPOSAL

Our agents have provided increased assistance to CNMI law enforcement officers in the area of criminal investigation and training.

Additional funding will allow the agents and task force officers in Guam and Honolulu to continue their assistance to the CNMI, with emphasis on training and liaison.

Our plans for the next year include the addition of an investigative assistant to the Guam Field Office which will help allow our agents in the field to spend more time on developing criminal investigations. Investigations into armed career criminals and armed drug traffickers will continue with the assistance of additional funding for evidence purchase and subsistence for confidential information. Additional funding will also be used to purchase electronic surveillance equipment, video surveillance equipment, and cellular telephones. A leased vehicle will also be needed. Funding will be needed for agents and technical staff to travel from Guam, Hawaii, and the continental U.S. to perform duties in the CNMI.

Training will be a priority over the next year with ATF planning to train CNMI law enforcement officers in the areas of firearms trafficking investigative techniques, interviewing and interrogation techniques, arson-for-profit investigations, post bomb blast scene investigative techniques, undercover techniques, and operational security techniques.

Finally, funding will also be needed for office equipment to include a desk-top computer, monitor, printer, and associated software. This list also includes a typewriter, transcriber, and calculator.

The estimated cost to carry out these plans is attached.



## Appendix C

## CENSUS

CNMI 1995 MID DECADE CENSUS OF POPULATION AND HOUSING  
PRELIMINARY REPORT

	1985	1990	% Change 90 to 95	Distribution	
				1995	1990
I. <u>POPULATION - General</u>					
1. Total	59,913	43,347	38.2%	100.0%	100.0%
Saipan	53,813	38,898	38.3%	89.8%	89.7%
Tinian	2,971	2,118	40.3%	5.0%	4.9%
Rota	3,121	2,293	36.0%	5.2%	5.3%
Northern Islands	8	38	-77.8%	0.0%	0.1%
2a. Housing Units Population	48,718	31,856	52.9%	81.3%	73.5%
Saipan	43,098	27,940	54.2%	71.9%	64.5%
Tinian	2,513	1,874	34.1%	4.2%	4.3%
Rota	3,101	2,006	54.6%	5.2%	4.6%
Northern Islands	8	38	-77.8%	0.0%	0.1%
2b. Group Quarters Population	11,195	11,489	-2.6%	18.7%	26.5%
Saipan	10,888	10,958	-2.8%	17.8%	25.3%
Tinian	115	244	-52.9%	0.2%	0.6%
Rota	414	289	43.3%	0.7%	0.7%
Northern Islands					
II. <u>POPULATION - Demographics</u>					
1. <u>ETHNIC ORIGIN</u>					
Total .....	58,913	43,345	38.2%	100.0%	100.0%
Chamorro	18,988	14,184	19.7%	28.4%	32.7%
Carolinian	3,103	2,987	3.9%	5.2%	8.9%
White/American	2,162	375	147.1%	3.6%	2.0%
Filipino	19,888	14,180	38.9%	32.8%	32.7%
Chinese	7,120	2,831	147.1%	11.9%	6.6%
Japanese	1,157	784	47.6%	1.9%	1.8%
Korean	2,388	2,571	-7.1%	4.0%	5.9%
Micronesian	5,077	3,466	46.5%	8.5%	8.0%
FSM	2,840	1,754	50.5%	4.4%	4.0%
Palauan	2,297	1,620	41.8%	3.8%	3.7%
Marshallese	140	92	52.2%	0.2%	0.2%
All Others	2,252	1,427	57.8%	3.8%	3.3%

2. CITIZENSHIP	59,913	43,345	38.2%	100.0%	100.0%
Citizen or National	27,512	20,082	37.0%	45.9%	48.3%
Born in the CNMI	21,721	16,752	29.7%	38.3%	38.6%
Born in the U.S. or other U.S.					
Territory or Commonwealth	4,418	2,405	83.7%	7.4%	5.5%
Born abroad, U.S. parent(s)	239	237	0.8%	0.4%	0.5%
Naturalized Citizen	1,134	688	84.8%	1.9%	1.8%
Not a Citizen or National	32,401	23,263	39.3%	54.1%	53.7%
Permanent Resident	3,532	2,188	61.4%	5.9%	5.0%
Temporary Resident	28,869	21,075	37.0%	48.2%	48.8%

### III. HOUSING - General

1. Total Housing Units	14,544	8,206	77.3%	100.0%	100.0%
Saipan	12,980	7,251	79.1%	89.3%	88.4%
Tinian	832	429	47.3%	4.3%	5.2%
Rota	921	519	77.5%	6.3%	6.3%
Northern Islands	1	6	-83.3%	0.0%	0.1%
2a. Housing Units Occupied	11,812	6,873	71.9%	81.2%	83.8%
Saipan	10,593	6,085	74.1%	72.8%	74.2%
Tinian	522	366	42.6%	3.6%	4.5%
Rota	898	419	67.3%	4.8%	5.1%
Northern Islands	1	6	-83.3%	0.0%	0.1%
2b. Housing Units Vacant	2,498	1,332	87.5%	17.2%	16.2%
Saipan	2,180	1,165	87.0%	15.0%	14.2%
Tinian	96	83	52.4%	0.7%	0.8%
Rota	222	103	115.5%	1.5%	1.3%
Northern Islands					
3. Group Quarters	201	153	43.1%	100.0%	100.0%
Saipan	176	311	43.4%	87.6%	88.1%
Tinian	10	15	33.3%	5.0%	4.2%
Rota	15	27	44.4%	7.5%	7.6%

Appendix D

**CNMI Support for  
Minimum Wage Increase**

# Chamber of Commerce

P.O. Box 806 CK Saipan MP 96950 • Family Building Suite 104 Garapan

65

December 26, 1995

Governor Froilan C. Tenorio  
Commonwealth of the Northern Mariana Islands  
Capitol Hill  
Saipan MP 96950

Dear Governor Tenorio:

The Joint (1995 outgoing and 1996 incoming) Board of Directors of the Saipan Chamber of Commerce met last week and discussed the current issue of postponement of the next increase of the minimum wage which we understand is before you now for signature or veto.

The Chamber would like to take this opportunity to again reiterate its position in support of the current existing law which calls for an automatic and annual increase in the minimum wage. Supporting an increase in the cost of doing business may seem odd coming from the business sector, however the Chamber took the stand to support this legislation at the time of its implementation, and continues to stand behind that decision. It is a matter of honor, integrity and standing by our collective word as a Commonwealth.

Secondly, the CNMI currently courts a reputation of instability with investors, which is keeping needed development at bay and worse, redirecting potential investment to other destinations such as Palau and Southeast Asia. Another "switchback" such as this, in the operational regulations of business in the CNMI will only credit these adverse perceptions and bolster the perceptions of barriers to investment in the CNMI.

The Chamber, on behalf of the business sector, urges you to give serious consideration to maintaining the current law in force. Should you have any questions, the SCC stands by to assist in any way possible.

Sincerely,



Efrain F. Camacho  
Chairman of the Board  
for the Board of Directors



P.O. Box 5075 CHRB, Saipan, MP 96950  
Tel: (670) 234-6449  
Fax: 234-8799

February 6th 1996

Jack Torres,  
Chairman,  
Wage and Salary Review Board,  
Saipan, CNMI.

Dear Chairman Torres,

As president of the Hotel Association of the Northern Mariana Islands, I received your letter and questionnaire of January 31st. Please find below the Associations answers and comments. We would like to thank you for the opportunity to comment and would like you to take these comments into consideration with the testimony already given on November 17th 1995.

1. Each industry was asked this question before the current law was passed and the Hotel Association stands by its original objective of increasing the minimum wage to \$4.25 over several years at \$0.30 per year unless there is a major turndown in business.
2. A tiered wage system will be seen as unfair by employees of those industries whose minimum wage is lower. Also it will lead to some industries bargaining for lower increases. One policy for all would be the most fair.
3. Wages can be linked to skill levels or to productivity targets and all these factors should be left to the individual companies to decide what is best for them. However there should be a minimum level below which employers are not able to pay. In a free market economy the wages should be left to market forces, except for the minimum wage, to stop unscrupulous employers taking advantage. As to whether the increase in the minimum wage is required to remain politically correct, if the CNMI wants to continue to depend on the US for financial and other support, it seems, it will have to listen to their recommendations.
4. In a service industry labor is not a factor of production it is the major expense. It needs to be balanced with other costs. It varies from industry to industry and company to company.

*Hotel Association of the Northern Mariana Islands - Chalan Kanoa Beach Club - Coral Ocean Point Resort - Onizuka Hotel - Hatohadi Beach Hotel*

labor willing to work at the wages and salaries offered then there is no need to increase the pay. A legislated increase in the minimum wage will ensure an increase.

11. Tourism could easily grow to replace some of the garment industry. The demand for tourist destinations from Asia is increasing at a fast rate. The location of the CNMI combined with its favorable climate and natural beauty makes it an ideal place for vacations. A more stable political environment and clear laws on land leases would help in making the CNMI more attractive to investors. The CNMI must get ready to live without a garment industry. Marine enterprises and research potentials are some possible replacements. The reef and ocean are incredible sources of new products from medical to cosmetic to household uses. Our goal should be to encourage scientific and industrial exploration while maintaining sufficient environmental controls for protection.

12. We need to keep up with the increase in the cost of living and gradually increase to a minimum wage which is nearer Guam's and the rest of the developed world.

13. If the US Minimum Wage was \$8.46 per hour unemployment would probably be higher and more people would have less than they have today. Prices would have to increase or service levels cut back. Both could have the negative effect of reducing the number of visitors to the CNMI.

In conclusion, HANMI submits to the Board that the present minimum wage law should remain as it is, with gradual increments that allow the necessary time to adjust our businesses, to increase our productivity and to make the pay increases without damaging the service to our customers.

Sincerely Yours,



Clifford Grauers,  
President HANMI



# C.N.M.I. CONTRACTORS ASSOCIATION

68

P.O. BOX 552 CHRR, SAIPAN, MP 96950 • TEL. 322-9039

2-13-96

## CONTRACTORS ASSOCIATION SAID YES! FOR YEARS!

Dear Editor:

After seeing some of the wage items in your paper, and hearing comments about why the C.N.M.I. CONTRACTORS ASSOCIATION didn't show up for the Wage Board's hearing, I would like to dig back a bit and present the facts on this issue.

Minimum wage has been a part of the Association's agenda for years, and recommendations have been plentiful and consistent throughout those years. There has been support for an increase at every gathering.

To take just the last three years, and only a few of the examples, consider the following items.

1. The C.N.M.I. CONTRACTORS ASSOCIATION was asked in January of 1993 to again come up with our recommendation for a wage increase. (One of several times over the years) Our suggestion was to raise the wage to \$2.50 in 1993, \$3.25 in 1994, \$4.00 in 1995, and match the U.S. Minimum Wage in 1996. With this we requested that all benefits be considered for an acceptable deduction from this wage because those items add considerably to the basic wage.

2. In April 1993 we submitted documents showing that based on 5000 workers, a raise of \$1.50 per hour would generate an additional \$15,600,000 per year in taxable, expendable income for contract workers, and outlined how this would help boost the economy.

3. Again in April 1993, we submitted our comments to the Senate that we were apposed to S.D. 8-146 to immediately raise the wage to U.S. Minimum, but fully supported S.D. 8-197 for a gradual increase. We also gave our support to the comments of Mr. Eloy Inos, Director of Finance and Chairman of the Task Force on Minimum Wage.

4. In May of 1993, the C.N.M.I. CONTRACTORS ASSOCIATION, out of total frustration with the local governments complete inaction, sent Mr. Herman Guerrero and myself to Washington D.C. to voice our opinion on several issues, including Minimum Wage. We told the people we met with that our group had tried for eight years to get an increase pushed through, and that we still supported



a gradual increase in the wage up to U.S. Minimum.

5. In our trip report, published in the Variety on May 21, 1993, we again stated that an increase was needed and overdue. It was agreed that the more we pay our workers, the more money there will be to circulate through the economy.

6. On August 11, 1993, Governor Guerrero asked our Association to again participate in a Wage and Salary Review Board, and I appointed Mr. Richard Szumiel to this post. As of January 19, 1994, this board had met only twice under Chairman David Sablan. He was faced with trying to gather and administer a board that had no funds for an office, supplies or even to fly in the Tinian and Rota members. Additionally, Governor Tenorio reported positions to the media, and presented Speaker Diego Benavente with a proposed bill regarding minimum wage without even providing a copy to the Board, much less any input they were there to give. Still, at that time, all the associations on the island agreed to the gradual increase.

7. On February 2, 1994, the Variety again carried the C.N.M.I. CONTRACTORS ASSOCIATION'S backing of the law stating a yearly rise in wages until we reach U.S. Minimum Wage. At that time we also stated that we had always supported a much quicker increase, yet since there was agreement with all sectors, and the law was in place, we voted for status quo. We also said if the wage was to be raised to the U.S. Minimum immediately, that we would support it with, again, some discussion on benefits given to contract workers. Whatever the wage rate or law or changes made, we felt it important not to have to change it again down the road. (Exactly what just happened!) Too many changes just add to the already obvious indecision of the government, and a climate of instability for investors. This appearance of instability is what we wanted to avoid by having a workable wage law.

8. On November 15, 1994, the Variety again published some of our thoughts on wages. The wrath of the U.S. Congress was upon us, and I stated that had we paid and treated contract workers the way we should have, there would have been no complaints and Congress would have no reason to look over our shoulders. And, once again, we were asked our position on wage increases and once again we said YES! RAISE THE MINIMUM WAGE!

9. On December 2, 1994, I was asked to meet with Senator Hecog to discuss S.B. 9-142, to increase the minimum wage to \$4.25 per hour by July 1995. At that time I showed him realistic figures of how little the negative impact could be, and how tremendous the positive impact would

be if this happened. And again told him if this is what will happen, we will support it. Our concern was still regarding all the additional costs and benefits involved and how to set a fair standard for deductions of these costs. It was made very clear that we would live with whatever the wage would become if we could work that out, and, most importantly, IF THEY WOULD STOP CHANGING THE LAW ALL THE TIME!

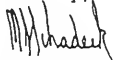
10. On December 26, 1994, we submitted to Speaker Benavente our comments on H.B. 9-272. This was more panic legislation to appease the U.S., and would have made doing business here even more problematic. We suggested raising the wage and again showed figures on how to do it with a positive business and government impact.

11. On November 27, 1995, I submitted to Jack Torres a position paper saying the yearly increases that were dictated by law were fair, timely, and would not put undo burden on our industry.

12. On December 27, 1995, the Variety printed, "Among the business sector, the Chamber is the only group which has expressed support for the .30¢ per hour increase. THE ONLY GROUP? Do you read your paper?"

If the past few years of our support and recommendations isn't enough to show our position, why the hell bother to try anymore! It seems as though the only real opposition to a wage increase comes from the garment industry which, curiously enough, the Chairman of the Wage and Salary Review Board works for! If the garment companies truly can not survive a wage increase then perhaps they could come up with their own program for increases. They do produce significant revenues for the Commonwealth so we may have to look differently at them. But the rest of the sectors that agree with a raise in wage, and discussed it for years before the increase became law should not be made to look bad because of one industry that now does not agree.

Sincerely,



Mike Schadeck  
C.N.M.I. CONTRACTORS ASSOCIATION

RESPONSES TO QUESTIONS FROM RICHARD N. REBACK



**U.S. Department of the Interior  
Office of Inspector General**

**Responses to Additional Subcommittee  
Questions Regarding Water Island,  
U.S. Virgin Islands**

**Submitted for the Record Hearing  
on the Federal-Commonwealth of the Northern  
Mariana Islands Initiative on Labor,  
Immigration, and Law Enforcement  
and Related Northern Mariana Islands  
Legislative Reforms  
(Held June 26, 1996)**

**Subcommittee on Native American  
and Insular Affairs  
Committee on Resources  
U.S. House of Representatives**

**Richard N. Reback  
Chief of Staff and General Counsel  
Office of the Inspector General  
U.S. Department of the Interior**



## United States Department of the Interior

OFFICE OF THE INSPECTOR GENERAL  
Washington, D.C. 20240

JUL - 9 1996

Honorable Elton Gallegly  
Chairman, Subcommittee on Native  
American and Insular Affairs  
Committee on Resources  
House of Representatives  
Washington, D.C. 20515-6205

Dear Mr. Chairman:

As requested, we are providing responses to the audit-related questions the Subcommittee on Native American and Insular Affairs submitted after the Inspector General's June 26, 1996, testimony at the hearing on the Federal-Commonwealth of the Northern Mariana Islands Initiative on Labor, Immigration, and Law Enforcement and Related Northern Mariana Islands Legislative Reforms. In view of the Inspector General's recusal, responses to the questions regarding Water Island are being provided by Chief of Staff and General Counsel in the Office of Inspector General. All other questions will be addressed by the Inspector General, Ms. Wilma A. Lewis, under separate cover.

If you or any members of the Subcommittee have additional questions, please contact me at (202) 208-5745.

Sincerely,

Richard N. Reback  
Chief of Staff and General Counsel

Enclosure

cc: Honorable Eni F. H. Faleomavaega

**Question 1:** What is the amount of annual lease rent that is being collected by the Department from each lessee?

**Answer 1:** The lease agreement requires payment of a fixed rent of \$3,000 per calendar year, plus 3 percent of gross receipts over \$200,000 but not more than \$300,000 and 4 percent of gross receipts over \$300,000. The lease defines gross receipts as income received from room rentals, bar sales, and subleases. Revenues from other sources are excluded from the computation of rental payments. The Department collects annual rent only from the Water Isle Hotel and Beach Club, Ltd. (the Lessee), which purchased all rights under the lease from Water Island Incorporated in 1965. The most recent information we have on the amount of annual rental payments, based on our March 1988 audit report entitled "Water Island Rental Payments," is that the Lessee paid rent of \$21,031 and \$43,018 for calendar years 1985 and 1986, respectively.

**Question 2:** Is this amount being collected from all of the sublessees, including those in Sprat Bay (who are at times referred to as sub-sub-lessees)?

**Answer 2:** The Department does not collect rents or fees directly from sublessees. The Lessee collects annual rents of \$25 or \$100 from each of its sublessees. In that regard, the Lessee collects an annual rent of \$100 from Sprat Bay but does not collect any rents from Sprat Bay's sublessees. Annual rents from the Lessee's sublessees are included in the Lessee's gross receipts for purposes of computing the Lessee's annual rent payment to the Department.

**Question 3:** Did this requirement to collect rent end or change at the expiration of the 40 year lease?

**Answer 3:** The Office of Inspector General has no information regarding the effect, if any, that the expiration of the lease had on the Lessee's obligation to pay rent or the Department's obligation to collect rent.

**Question 4:** Are these funds being properly collected and accounted for?

**Answer 4:** We have no current information regarding whether rental payments are being properly collected and accounted for. Our September 1985 audit report entitled "Lease to Water Island, U.S. Virgin Islands" found that from 1972 through 1981, documentation was not available to verify either that rent was actually paid or received or to substantiate the Lessee's gross receipts. For the years 1982 through 1984, the hotel was closed for remodeling and therefore the Lessee properly paid only the \$3,000 annual rent. In response to that audit report, the Office of Territorial and International Affairs (now the Office of Insular Affairs) instituted a new annual reporting process to verify lease payment computation. Our March 1988 audit report on Water Island's rental payments examined Water Isle Hotel and Beach Club, Ltd.'s accounting records as they related to rental payments for the lease of Water Island and to the payment of taxes imposed by the Virgin Islands Government for calendar years 1985 and 1986. We did not find any material discrepancies in the computation of rental payments for those years. However, we did conclude that the Office of Territorial and International Affairs needed to require the Lessee to submit amended annual reports to ensure that any adjustments to the Lessee's gross receipts resulting from its financial statement audit were disclosed and any additional rent due was paid. During the resolution of the 1988 audit report, we noted that the Lessee submitted amended reports for 1987 and 1988.

**Question 5:** What management practices have attributed to the delay in resolving the transfer of title to Water Island properties?

**Answer 5:** We have no information directly responsive to this question. By way of background, our 1985 audit concluded that interests of the Federal Government were not adequately protected by the terms and conditions established in the lease. Specifically, Section 10 of the lease placed the Department in an unfavorable position when the lease expired because it allowed the Lessee to occupy the island indefinitely until a successor was found and a fair compensation was paid for possessory interests. Regarding renegotiation of lease terms, we reported in our 1985 audit that section 402 of Public Law 96-205 (the Omnibus Territories Act), passed in 1980, stated that "[n]o extension, renewal, or renegotiation of the lease of real property on Water Island in the Virgin Islands to which the United States is a party may be entered into before 1992 unless such extension, renewal, or renegotiation is specifically approved by Act of Congress."

Given this situation, we recommended that the Assistant Secretary for Territorial and International Affairs determine whether Water Island was to be retained or declared excess at the expiration of the lease. If Water Island was to be declared excess, we recommended that the Assistant Secretary notify the General Services Administration that the island would be available for disposal but still would be subject to the current lease and Section 402 of Public Law 96-205. If Water Island were to be retained, we recommended that the Assistant Secretary either seek Congressional approval to renegotiate the current lease to obtain more favorable terms or develop a plan of action for when the lease expires. The plan should address how Water Island is to be used and which entity would be responsible for monitoring and controlling its use. In response to our recommendations, the Assistant Secretary reported that "the House Interior and Insular Affairs Committee, which earlier had imposed restrictions on OTIA's [Office of Territorial and International Affairs] authority to revise or modify the existing lease arrangement, has indicated that language will be placed in an Omnibus territories bill currently under consideration directing OTIA submit to Congress a plan providing for the disposition of Water Island upon the expiration of the present lease in 1992. It is our intent to comply with this legislative directive within the time limit imposed by the legislation." We deemed this response sufficient for us to consider the audit to be resolved. We have received no subsequent information from OTIA that states whether a plan was developed or implemented for the disposition of Water Island.

Question 6: The Environmental Impact Statement was issued in May 1996. Why wasn't this initiated after the 1992 expiration of the lease?

Answer 6: We have no information responsive to this question.

Question 7: What was the Department's position on the value of the possessory interest to the hotel and what was the ruling of the Court?

Answer 7: We have no information responsive to this question.



RESPONSES TO QUESTIONS FROM WILMA A. LEWIS



**U.S. Department of the Interior  
Office of Inspector General**

**Responses to Additional Subcommittee Questions  
Submitted for the Record**

**Hearing on the  
Federal-Commonwealth of the Northern Mariana Islands  
Initiative on Labor, Immigration, and Law Enforcement and  
Related Northern Mariana Islands Legislative Reforms  
(Held June 26, 1996)**

**Subcommittee on  
Native American and Insular Affairs  
Committee on Resources  
U.S. House of Representatives**

**Wilma A. Lewis  
Inspector General  
U.S. Department of the Interior**



## United States Department of the Interior

OFFICE OF INSPECTOR GENERAL  
Washington, D.C. 20240

JUL 10 1996

Honorable Elton Gallegly  
Chairman, Subcommittee on  
Native American and Insular Affairs  
Committee on Resources  
House of Representatives  
Washington, D.C. 20515-6205

Dear Mr. Chairman:

As requested, we are providing responses to the audit-related questions the Subcommittee on Native American and Insular Affairs submitted after my June 26, 1996, testimony at the hearing on the Federal-Commonwealth of the Northern Mariana Islands Initiative on Labor, Immigration, and Law Enforcement and Related Northern Mariana Islands Legislative Reforms. In view of my recusal, responses to the questions regarding Water Island will be provided under separate cover by Mr. Richard N. Reback, Chief of Staff and General Counsel.

In addition, we are providing a copy of our March 1996 audit report "Management of Public Land, Commonwealth of the Northern Mariana Islands" and of Governor Tenorio's response, both of which were discussed extensively at the hearing. Also, we are providing a copy of our October 1995 "Status of Improvements in Financial Management and Program Operations Commonwealth of the Northern Mariana Islands," which summarized major long-standing problems in financial management and program operations that have been identified in audits of the Commonwealth. We request that these three documents be included in the record of the proceedings.

We appreciated the opportunity to provide testimony at the hearing. If you or any members of the Subcommittee have additional questions, please contact me or Mr. Reback at 208-5745.

Sincerely,

Wilma A. Lewis  
Inspector General

cc: Honorable Eni F. H. Faleomavaega

**Question 1:** What is the aggregate cost of all the amounts identified in your statement?

**Answer 1:** The monetary amounts identified in the nine reports total \$770,789,342. The amounts presented in each of the nine reports are contained in the following table:

Report	Lost Revenues <sup>1</sup>	Funds To Be Put To Better Use <sup>2</sup>	Potential Additional Revenues <sup>3</sup>	Total
Management of Public Land, CNMI (No. 96-I-596), March 1996	\$25,650,105	*\$195,455,214	**\$469,224,047	\$690,329,366
Status of Improvements in Financial Management and Program Operations, CNMI (No. 96-I-157), November 1995	0	0	0	0
Assessment and Collection of Income Taxes, CNMI (No. 95-I-694), March 1995	13,850,000	0	17,534,000	31,384,000
Income Tax Revenues, CNMI (No. 95-I-175), November 1994	23,000,000	0	0	23,000,000
Contracting and Contract Administration, Commonwealth Utilities Corporation, CNMI (No. 95-I-106), November 1994	0	5,963,022	0	5,963,022
Utilities Rate Structure, Commonwealth Utilities Corporation, CNMI (No. 94-I-1323), September 1994	0	16,400,000	0	16,400,000
Followup of Recommendations Concerning Capital Development Funds, CNMI (No. 94-I-945), July 1994	2,029,396	205,558	0	2,234,954
Followup of Recommendations Concerning the Economic Development Loan Fund, Commonwealth Development Authority, CNMI (No. 94-I-936), July 1994	0	0	0	0
Followup of Recommendations Concerning the Economic Development Loan Fund, Mariana Islands Housing Authority, CNMI (No. 94-I-942), July 1994	498,000	980,000	0	1,478,000
<b>Total</b>	<b>\$65,027,501</b>	<b>\$219,003,794</b>	<b>\$486,758,047</b>	<b>\$770,789,342</b>

\* Includes projected losses for land exchanges pending as of June 30, 1994.

\*\* Includes projected losses for the remaining terms of leases that were unexpired as of June 30, 1994. Leases are generally for 25-year terms.

<sup>1</sup>Revenues that were not realized because policies, procedures, agreements, or requirements were lacking or not followed.

<sup>2</sup>Funds that could be used more efficiently if management took actions to implement and complete the recommendation, including reductions in expenditures.

<sup>3</sup>Monetary amounts from revenue-generating functions such as rent, leases, mineral royalties, or fees that were underpaid or not realized because policies, procedures, agreements, or requirements were lacking or not followed.

**Question 2:** When the audit was issued regarding the mismanagement of public lands in the NMI, approximately \$700 million in lost revenue was cited. Based on the late response by the Governor of the NMI, what do you now estimate the total in lost revenue?

**Answer 2:** The audit covered the period October 1, 1989, to September 30, 1994, and other periods as appropriate and included a review of selected applications, deeds, leases, permits, contracts, and appraisals for transactions that were either completed or pending at the time. We do not have any additional information pertaining to the exchange of land, the issuance of leases, or the award of homestead permits that may have occurred since September 1994. Accordingly, we are unable to provide any new estimates. However, if the types of practices identified in the report as in need of correction continued after that date, additional losses would have occurred. We are providing a copy of our March 1996 audit report "Management of Public Land, Commonwealth of the Northern Mariana Islands" and a copy of Governor Tenorio's response to the final report as Enclosures 1 and 2, respectively. We are requesting that these two documents be included in the record of the proceedings.

**Question 3:** (a) What other audits have been conducted in the last three years and what costs or loss of revenues have you identified? (b) Have there been timely replies to the audits? © What percentage of Inspector General recommendations have been implemented?

**Answer 3(a):** Our response to Question 1 covers all Office of Inspector General internal audit reports issued in the past 3 years. Internal audits are those reviews of internal operations that determine whether: (1) activities are conducted in accordance with laws and regulations; (2) activities are conducted economically and efficiently; (3) desired results of programs are being achieved; and (4) agency financial statements are presented accurately. In addition, we have performed two grant audits, the objective of which was to determine whether Federal grant funds were used for the intended purposes and were properly accounted for in accordance with applicable laws and regulations. We have also reviewed and processed 17 single audits during the past 3 years. Single audits, which are performed by independent public auditors, are comprehensive financial audits required by the Single Audit Act of 1984 for entities receiving \$100,000 or more in Federal assistance in any fiscal year. These various audits and associated questioned costs are presented in the following table:

Report Number and Title	Issue Date	Questioned Costs*
<b>SINGLE AUDITS</b>		
93-A-1563 Commonwealth Development Authority (CNMI), FY 1988	9/13/93	\$4,998,398
94-A-35 Commonwealth of the Northern Mariana Islands, FY 1990	10/21/93	0
94-A-214 Commonwealth of the Northern Mariana Islands, FY 1991	1/4/94	0
94-A-419 Commonwealth Ports Authority, FY 1993	3/14/94	0
94-A-525 Commonwealth Development Authority, FY 1989	4/15/94	\$6,078,308
94-A-574 Commonwealth Utilities Corporation, FY 1990	5/6/94	\$166,509
94-A-785 Commonwealth of the Northern Mariana Islands, FY 1992	6/13/94	0
94-A-818 Commonwealth Utilities Corporation, FY 1991	6/16/94	0
94-A-836 Commonwealth of the Northern Mariana Islands, FY 1993	6/20/94	0
94-A-883 Commonwealth of the Northern Marianas Public School System, FY 1990	6/27/94	0
94-A-969 Commonwealth of the Northern Marianas Public School System, FY 1991	7/12/94	0
94-A-1075 Northern Marianas College, CNMI, FY 1991	7/29/94	\$4,600
94-A-1083 Mariana Islands Housing Authority, FY 1993	8/3/94	0
95-A-784 Commonwealth Ports Authority, FY 1994	4/12/95	0
95-A-1131 Commonwealth of the Northern Mariana Islands Public School System, FY 1992	7/17/95	0
95-A-1151 Commonwealth of the Northern Mariana Islands Public School System, FY 1993	7/25/95	0
95-A-1342 Commonwealth of the Northern Mariana Islands, FY 1994	9/15/95	0
<b>GRANT AUDITS</b>		
96-E-269 Trust and Grant Funds Provided for the American Memorial Park (CNMI)	1/26/96	\$141,619
96-E-889 Expenditures Claimed by the CNMI for FY 1993 and FY 1994 Under Federal Aid Grants from the U.S. Fish and Wildlife Service	6/10/96	\$858,267
<b>Total</b>		<b>\$12,247,701</b>

\*Costs identified which are either unsupported, not expended for the purpose intended, or in violation of a provision of a law, regulation, or agreement.

**Answer 3(b):** With the exception of the audit of public lands, to which a response to the draft report was never provided, the CNMI has provided responses in an overall timely manner to internal and grant audits performed by the Office of Inspector General and to single audits performed by independent public auditors. The effect of failing to respond to our draft audit report on public lands was that the CNMI did not take advantage of the opportunity to present its position on our findings and recommendations, along with any additional information that it believed would further clarify its position relative to the findings and recommendations, for inclusion in our final audit report. Accordingly, the final report was issued without the benefit of the response, and all recommendations were considered unresolved. The potential for early resolution of the recommendations was thus delayed until the time period established for post-report responses.

**Answer 3(c):** The most current information available to us from officials within the CNMI and the Department of the Interior's Office of Insular Affairs regarding implementation of audit recommendations made during the past 3 years indicates the following: 45 (71.4 percent) of the 63 recommendations have been resolved and reported by those officials as implemented; 9 (14.3 percent) of the 63 recommendations have been resolved but not implemented; and 9 (14.3 percent) of the 63 recommendations are unresolved. (Fifty-four of the 63 recommendations were addressed to the CNMI, and 9 were addressed to the Department of the Interior's Office of Territorial Affairs, now the Office of Insular Affairs.) In addition, single audits reviewed by us during the past 3 years identified 633 recommendations, of which 319 (50.4 percent) are resolved and reported as implemented. There were no recommendations presented in the two grant audits performed by us during the past 3 years.

To date, responsible officials within the CNMI have reported that they have implemented 36 (66.7 percent) of the 54 audit recommendations that were addressed to the CNMI during the past 3 years and that 9 (50 percent) of the remaining 18 recommendations have been resolved. However, as our followup audits on earlier recommendations concerning the Capital Development Funds and the Economic Development Loan Fund showed, recommendations, although resolved, are not always implemented. Further, recommendations reported as implemented by the auditee are not always implemented fully or effectively. Specifically, only 4 (16 percent) of 25 resolved recommendations from earlier audits of those programs had been implemented fully and effectively at the time of our followup audits, notwithstanding the passage of several years.<sup>5</sup>

**Question 4:** There have been reports of misuse of government funds by officials in different segments of the NMI Government. What steps do you recommend to ensure the proper and adequate accounting of public funds in the NMI?

---

<sup>5</sup>Thirty-six recommendations were made in the earlier audits, 32 of which were not implemented fully or effectively at the time of our followup audits. Of the 36 recommendations, the Commonwealth had agreed with 20 of the 30 recommendations made to it, and the Office of Insular Affairs had agreed with 5 of the 6 recommendations made to that Office.

**Answer 4:** We recommend the following:

(1) Implementation of Outstanding Office of Inspector General Recommendations:

Over the years, the Office of Inspector General has made numerous recommendations that would improve the proper and adequate accounting of funds in the CNMI if the recommendations are implemented fully and effectively. We summarized major long-standing problems in financial management and program operations of the CNMI in the October 1995 report "Status of Improvements in Financial Management and Program Operations, Commonwealth of the Northern Mariana Islands" (Attachment). Among other issues, this report highlighted the major long-standing problems in financial management and program operations that prior audits had identified and the basic performance goals and specific improvement actions that the Commonwealth should strive to achieve in the areas of financial management, expenditure control, revenue collection, and program operations. Recommendations for corrective action that were summarized in the October 1995 report included the following:

- Ensure that all Commonwealth accounting systems are adequately maintained and are capable of generating annual financial statements, which are then audited in a timely manner.
- Ensure that the encumbrance and accounts payable accounting systems provide the current and reconciled accounting data necessary to prepare accurate annual financial statements.
- Approve, on an annual basis, governmentwide budgets that limit expenditures and transfer authorizations to the most current and realistic revenue projections.
- Revise the encumbrance system to ensure that accurate and timely budget data are available for evaluation before budget allotments are released.
- Implement controls for property management, conduct annual physical inventories, and limit access to expendable supply.
- Implement procedures for ensuring that contractors comply with the terms and conditions of contracts and for determining whether contractor billings are reasonable and valid.
- Establish formal written policies and procedures to monitor and review Capital Development Fund projects and project expenditures for allowability and sufficiency of supporting documentation.

We believe that these recommendations and others in our October 1995 report can serve as a guide for the Commonwealth to address major long-standing problems that have been identified in our previous audit reports.

(2) Technical Assistance:

Priorities for future technical assistance by the Federal Government should be established with the identified problem areas in mind, and funds and assistance should be specifically earmarked to address the identified problem areas.

(3) Congressional Oversight Hearings:

Periodic Congressional oversight hearings could serve as the necessary catalyst to encourage government officials in the CNMI and other insular areas to resolve and implement Inspector General audit recommendations. Such hearings would serve a particularly useful purpose because the Department of the Interior does not have the same level of authority or influence in the insular areas as it does in its own offices and bureaus to ensure that audit recommendations are resolved properly and implemented fully and effectively. In the absence of appropriate oversight of resolution and implementation activities, the benefits that can be achieved from the implementation of audit recommendations may not be fully realized.

(4) Reporting Requirement:

A requirement for insular area governments to submit an annual report to the Congress on actions taken to implement Inspector General recommendations would further encourage the implementation of audit recommendations and help ensure proper and adequate accounting of public funds.



A PROPOSED CONSTITUTIONAL AMENDMENT

To amend Article V relative to representation in the United States.

THE SECOND CONSTITUTIONAL CONVENTION ADOPTS AND PROPOSES FOR RATIFICATION THE FOLLOWING AMENDMENT:

1 I. Article V is amended to read:

2 "ARTICLE V: REPRESENTATION TO THE UNITED STATES

3 Section 1: Resident Representative to the United

4 States. A resident representative to the United States  
5 shall be elected to represent the Commonwealth in the

6 United States and perform those related duties provided  
7 by law. The governor shall provide a certification of  
8 selection promptly to the United States Department of  
9 State and to the resident representative.

10 Section 2: Term of Office. The term of office of  
11 the resident representative shall be two years, except  
12 that on the second Monday of January 1990, the term of  
13 office of the resident representative shall be increased  
14 to four years. In the event that the United States  
15 confers the status of member or non-voting delegate in  
16 the United States Congress on the resident representative  
17 and such status requires a different term, the term of  
18 office of the resident representative shall be that  
19 required by such status.

20 Section 3: Qualifications. The resident

21 representative shall be qualified to vote in the

1 Commonwealth, a citizen of the United States, at  
2 least twenty-five years of age, and a resident and  
3 domiciliary of the Commonwealth for at least seven  
4 years, immediately preceding the date on which the  
5 resident representative takes office. A different  
6 period of residence and domicile may be provided by  
7 law. No person convicted of a felony in the  
8 Commonwealth or in any area under the jurisdiction of  
9 the United States may be eligible for this office unless  
10 a full pardon has been granted.

11 Section 4: Annual Report. The resident  
12 representative shall submit a written report by the  
13 first day of March of each year, except that an outgoing  
14 resident representative shall submit a final written  
15 report by the second Monday of January of the year he o  
16 she leaves office, to the governor and legislature on  
17 the resident representative's official activities during  
18 the preceding year and matters requiring the attention  
19 of the government or people of the Commonwealth.

20 Section 5: Compensation. The resident  
21 representative shall receive an annual salary and  
22 reasonable allowance for expenses provided by law. The  
23 salary may not be changed during a term of office. The  
24 staff of the office of the resident representative shall  
25 be exempted from the civil service.

---

1           Section 6: Vacancy. In the event of a vacancy  
2           in the office of resident representative to  
3           the United States, the governor shall appoint a  
4           successor with the advice and consent of the legislature  
5           unless the United States confers the status of member  
6           or non-voting delegate in the United States Congress  
7           on the resident representative and such status requires  
8           a different method of filling vacancies, in which case  
9           vacancies shall be filled in the manner required by  
10          such status.

11          Section 7: Impeachment. The resident  
12          representative is subject to impeachment as provided in  
13          article II, section 8, of this Constitution for treason,  
14          commission of a felony, corruption or neglect of duty."  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE OF REPRESENTATIVES

TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE  
FIRST REGULAR SESSION, 1996

HOUSE JOINT RESOLUTION NO. 10-1

A HOUSE JOINT RESOLUTION

To request that the United States Congress establish a non-voting Delegate from the Northern Mariana Islands within the U.S. House of Representatives.

Offered by Representatives:

Diego T. Benavente,

Joaquin G. Adriano, David M. Apatang, Vicente M. Atalig, Jesus T. Attao, Oscar M. Babauta, Rosiky F. Camacho, Crispin I. Deleon Guerrero, Melvin O. Faisao, Maria (Malua) T. Peter, Karl T. Reyes, Pete P. Reyes, Manuel A. Tenorio, P. Michael P. Tenorio and Ana S. Teregeyo

Date: January 17, 1996

HOUSE ACTION

Adopted: January 17, 1996

SENATE ACTION

Adopted: January 18, 1996

  
Evelyn C. Fleming  
House Clerk



TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE  
FIRST REGULAR SESSION, 1996

---

H. J. R. NO. 10-1

---

A HOUSE JOINT RESOLUTION

To request that the United States Congress establish a non-voting Delegate from the Northern Mariana Islands within the U.S. House of Representatives.

1       TAKING NOTE that the Covenant negotiating history makes it clear that  
2       Section 901 does not preclude the Government of the Northern Marianas from  
3       requesting that a Delegate from the Northern Mariana islands be established in the  
4       Congress of United States;

5       FINDING that the current status of Commonwealth-federal relations, which  
6       has been marred by miscommunication, misinterpretation, and misinformation is  
7       further exacerbated by the lack of a constant and vigilant Commonwealth voice  
8       and presence in the House of Representatives and its various committees and  
9       subcommittees;

10       FINDING that the Northern Marianas Commonwealth Legislature has  
11       overwhelmingly approved two resolutions, namely House Joint Resolution 8-5 and  
12       Senate Joint Resolution 9-6, urging the Congress of the United States to establish a  
13       Delegate from the Northern Marianas within the U.S. House of Representatives;

14       OBSERVING that Article V, Section 2, of the Commonwealth Constitution as  
15       amended by Constitutional Amendment 24, provides that the United States may  
16       confer the status of nonvoting member delegate in the United States Congress on  
17       the Resident Representatives;

18       RECOGNIZING with gratitude that on August 10, 1994, Guam Delegate Robert  
19       Underwood introduced H.R. 4927 in the 103rd Congress, to provide a nonvoting  
20       delegate to the House of Representatives to represent the Commonwealth of the  
21       Northern Mariana Islands;

1 BELIEVING fervently that the pursuit of the delegate seat is imperative in  
2 attaining full status as a member of the American political family in which thus  
3 far the Northern Mariana Islands remains the only U.S. insular area not to be  
4 represented in the United States Congress;

5 HOLDING TO BE TRUE that non-voting delegate status for the Resident  
6 Representative would neither diminish the full force and effect of the Covenant to  
7 Establish a Commonwealth of the Northern Mariana Islands in Political Union  
8 with the United States of America nor in any sense abrogate, qualify, or release  
9 rightful claims to local self-government contained in Article I, Section 103 of the  
10 Covenant; it is

11 RESOLVED by the House of Representatives of the Tenth Northern Marianas  
12 Commonwealth Legislature, the Senate concurring, that the 104th Congress of the  
13 United States of America is hereby requested to:

14 (1) CONFER the status of nonvoting delegate in the United States  
15 Congress on the Resident Representative;

16 (2) PROVIDE that the Delegate from the Northern Mariana Islands  
17 receive the same compensation, allowance, benefits and be entitled to those  
18 same privileges and immunities as a Member of the United States House of  
19 Representatives;

20 (3) WORK CLOSELY with the present Resident Representative in the  
21 drafting of federal legislation necessary to realize the Delegate from the  
22 Northern Mariana Islands; and


23 RESOLVING FURTHER that the Speaker of the House and the President of the  
24 Senate shall certify and the House Clerk and the Senate Legislative Secretary shall  
25 attest to the adoption of this Resolution and thereafter transmit certified copies to:  
26 the Honorable William Jefferson Clinton, President of the United States; the  
27 Honorable Newt Gingrich, Speaker of the U.S. House of Representatives; the  
28 Honorable Richard Armey, Majority Leader of the U.S. House of Representatives;  
29 the Honorable Richard Gephardt, Minority Leader of the U.S. House of  
30 Representatives; the Honorable Don Young, U.S. House of Representatives; the  
31 Honorable Elton Gallegly, U.S. House of Representatives; the Honorable George  
32 Miller, U.S. House of Representatives; the Honorable Eni F.J. Faleomavaega, U.S.  
33 House of Representatives; the Honorable Robert Underwood, U.S. House of  
34 Representatives; the Honorable Eleanor Holmes Norton, U.S. House of


## HOUSE JOINT RESOLUTION NO. 10-1

1 Representatives; the Honorable Carlos Romero-Barcelo, U.S. House of  
2 Representatives; the Honorable Victor Frazer, U.S. House of Representatives; the  
3 Honorable Al Gore, Vice President of the United States and President of the U.S.  
4 Senate; the Honorable Robert Dole, Majority Leader of the U.S. Senate; the  
5 Honorable Tom Daschle, Minority Leader of the U.S. Senate; the Honorable Frank  
6 Murkowski, U.S. Senate; the Honorable J. Bennett Johnston, U.S. Senate; the  
7 Honorable Daniel Inouye, U.S. Senate; the Honorable Daniel Akaka, U.S. Senate; and  
8 the Honorable Bruce Babbitt, Secretary of the U.S. Department of Interior.

Adopted by the House of Representatives on January 17, 1996  
and by the Senate on January 18, 1996


CERTIFIED BY:

  
DIEGO T. BENAVENTE  
Speaker of the House

  
JESUS R. SABLÁN  
President of the Senate

ATTESTED BY:

  
EVELYN C. FLEMING  
House Clerk

  
HENRY DLG. SAN NICOLAS  
Senate Legislative Secretary

## HOUSE OF REPRESENTATIVES

TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE  
FIRST REGULAR SESSION, 1996HOUSE BILL NO. 10-152, H.D.1

## AN ACT

To enact a moratorium on any expansion of the garment manufacturing industry in the CNMI, including a prohibition on the issuance of new business licenses for garment manufacturing and a limitation on the importation of alien labor to work in the garment industry.

Offered by Representatives: Pete P. Reyes,  
Maria (Malua) T. Peter, Melvin O. Falsao, Jesus T. Attao and David M. Apatang

Date: February 16, 1996

## HOUSE ACTION

Standing Committee Report: None


First Reading: February 18, 1996

Second Reading: February 22, 1996

## SENATE ACTION

Standing Committee Report: None

Second and Final Reading: February 23, 1996

  
Evelyn C. Fleming  
House Clerk

## TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE

FIRST REGULAR SESSION, 1996

H. B. NO. 10-152, H.D.1

## AN ACT

To enact a moratorium on any expansion of the garment manufacturing industry in the CNMI, including a prohibition on the issuance of new business licenses for garment manufacturing and a limitation on the importation of alien labor to work in the garment industry.

BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:

1       Section 1. Title. This Act shall be referred to as "Garment Industry Moratorium Ac  
2 of 1996."

3       Section 2. Findings and Purpose. The garment manufacturing industry has been in  
4 existence in the CNMI since 1983. The industry was established as the result of an intensive  
5 campaign by the CNMI government to attract foreign investors. These investors would have  
6 the opportunity to take advantage of the Headnote 3A provision of the Harmonized Tariff  
7 Schedule of the United States which allows garments manufactured in the CNMI to enter the  
8 United States duty free.

9       The garment industry has had a very significant impact on the CNMI economy. It is  
10 responsible for over \$13 million in annual direct revenues to the government. However,  
11 according to an OTIA funded study, "The Impact of Aliens on the Fiscal Conditions of the  
12 Commonwealth of the Northern Mariana Islands," the net impact in 1992 of the garment  
13 industry on the CNMI was a negative \$1.3 million. This figure was arrived at by deducting the  
14 per capita cost of government services from the per capita revenues generated. It therefore  
15 appears that even the financial contribution of the garment industry to the economy of the  
16 CNMI is open to question.

17       The industry also provides approximately 7,500 jobs which create additional economic  
18 stimulation to local sales and services. However, ninety percent of those 7,500 jobs are held  
19 by non indigenous workers: nonresident aliens and citizens of the former Trust Territory of the  
20 Pacific Islands.

21       The use of nonresident garment workers is pervasive in the industry. Currently an  
22 estimated average of 400 nonresidents are employed per garment manufacturer. Thus, if ten  
23 new garment factories are licensed, an additional 4,000 nonresident garment workers may be  
24 needed to operate them. The influx of so many additional nonresident workers would place a



1 tremendous burden on all government services. Labor/immigration enforcement and health  
2 services would be particularly affected. Sewer and solid waste disposal would be stressed  
3 beyond capacity by the introduction of additional garment manufacturing facilities and  
4 workers. The Legislature finds that neither the social structure of the CNMI nor the  
5 mechanisms of government which provides public services could sustain the burdens that  
6 would be created by the entry of such large numbers of additional alien workers into the  
7 Commonwealth.

8 The Legislature has considered the fiscal impact of an expanded garment industry  
9 together with the social costs of sustaining an additional large transient alien population and  
10 the adverse effects of the industry on the natural environment and infrastructures. The  
11 Legislature thereupon finds that the health, welfare, and safety of the community dictates that  
12 there be an immediate moratorium on any expansion of the garment industry.

13 It is therefore the purpose of this legislation to prohibit the issuance of new business  
14 licenses for garment manufacturing and to limit the number of nonresident workers employed  
15 by the industry. These purposes were formerly implemented by regulation. The former  
16 regulations accomplished the following: placed a moratorium on the issuance of business  
17 licenses for garment manufacturing; placed restrictions on the issuance of nonresident worker  
18 certificates for garment workers; established a garment worker pool and quotas per  
19 manufacturer for garment workers; established reporting requirements for garment  
20 manufacturers. These regulations were administratively repealed in 1995. It is the intent of this  
21 legislation to statutorily and administratively re-impose the moratorium and restrictions on the  
22 garment industry that has served the Commonwealth well since 1987.

23 Section 2. Amendment. 1 CMC section 2453 (d) is hereby amended to read as  
24 follows;

25 "(d) To license and regulate businesses engaged in the construction trade and to  
26 license businesses which are not otherwise licensed or regulated by any other  
27 department, agency, instrumentality, or law of the Commonwealth. Except as  
28 otherwise provided by law, the Department of Commerce shall not issue or cause to be  
29 issued any business license for the purpose of garment manufacturing."

30 Section 3. Amendment. Title 4, Division 5 of the Commonwealth Code is hereby  
31 amended to add a new Chapter 6 to read as follows:

32 "CHAPTER 6.

33 Restrictions on Garment Manufacturing

34 Section 5601. Definitions. For purposes of this Chapter:

(a) "Business License" means that license required to engage in or conduct business under 4 CMC section 1503.

(b) "Engaged in Substantial Construction or Manufacturing" means:

(1) that manufacturing of textiles or textile products has begun or will begin on or before the end of the fourth month following the effective date of this Act; and

(2) the applicant provides evidence of the required working capital (cash) in an amount of not less than one million dollars (1,000,000) and proof of its deposit in a CNMI banking institution; and

(3) one of the following requirements:

(i) the applicant has executed a lease or leasehold agreement or otherwise acquired an interest evidenced in writing in real property within the Commonwealth for the purpose of erecting thereon a facility for the manufacture of textiles or textile products; or

(ii) the applicant has entered into a written contract(s) for the construction (including prefabrication) of a facility to be utilized for the manufacture of textiles or textile products on real property in the Commonwealth acquired for such purpose; or

(iii) the applicant has purchased or executed contract(s) for the purchase of necessary capital equipment designed for and typically employed in the manufacture of textiles or textile products; or

(iv) the applicant has recruited or caused by binding agreement to be recruited on its behalf at least eighty percent of non-immigrant alien workers skilled in the manufacture of textiles or textile products; or

(v) the applicant has made timely application to permitting authorities of the Commonwealth government (e.g. DEQ, CUC, CRM) for any permits required by law to be issued as a condition for the operation of a garment factory evidenced by a Department of Finance receipt of payment of the applicable fees.

(c) "Garment Manufacturer" means any sole proprietorship, partnership, corporation, firm, association, or other group or combination engaged in the creation, production, or assembly of textiles or textile products for purposes of export.

(d) "Garment Worker" means any person whose job title is listed under the definition of garment industry in the Dictionary of Occupational Titles published by the U.S. Secretary of Labor.

(e) "Qualified Garment Manufacturer" means a garment manufacturer engaged in manufacturing textiles or textile products.

(f) "Quota of a Manufacturer" means the number of non-immigrant alien garment workers allowed per garment manufacturer pursuant to regulations in effect prior to October 15, 1995.

(g) "Textiles or Textile Products" includes all manmade fibers, top yarn, piece goods, made-up articles, garments, and other textile manufacturer products which is made in whole or in part from any natural or manmade fiber or blend thereof, that are classified under Part 6 of Schedule 3, Parts 1, 4, 5, or 13 of Schedule 7, Part 1 of Schedule 8, or Part 1 of the Appendix to the Tariff Schedules of the United States (19 U.S.C 1202).

Section 5602. Prohibition on Issuance of New Licenses. Except as otherwise provided in this Act, the Department of Commerce shall not issue or cause to be issued to any applicant a business license for the purpose of garment manufacturing.

Section 5603. Restriction on Renewal of License. Notwithstanding any other provision of law, the Department of Commerce shall not renew or cause to be renewed to any applicant a business license for the purpose of garment manufacturing unless the applicant is a qualified garment manufacturer and can show one of the following:

(a) that the applicant held a valid business license for the purpose of garment manufacturing and was engaged in the manufacturing of textiles or textile products prior to January 1, 1995; or

(b) that the applicant was issued a valid business license for the purpose of garment manufacturing between January 1, 1995 and the effective date of this Act and that the applicant is engaged in substantial construction or manufacturing on the effective date of this Act.

Section 5604. Restriction on Issuance of Labor Certificates and Entry Permits

(a) The Department of Labor and Immigration shall not issue or cause to be issued or renewed any Nonresident Worker Entry Permit or Nonresident Worker Certificate to or on behalf of any non-immigrant alien to be employed as a garment worker except upon a written finding by the Secretary of Labor and Immigration that the applicant is:

(1) renewing an existing employment contract; or

(2) recruited to replace a non-immigrant alien garment worker whose contract of employment with a qualified garment manufacturer has terminated or will terminate within ninety (90) days; or

(3) recruited to fill an alien garment labor employment quota authorized by the Secretary of Labor and Immigration prior to October 15, 1995.

Section 5605. Garment Worker Pool. There is hereby established a garment labor pool which shall consist of all unused or unfilled non-immigrant alien garment worker positions within the quota of a manufacturer. The criteria and procedures for defining and allocating these unused or unfilled positions among licensed qualified garment manufacturers shall be as set forth by regulation prior to October 15, 1995.

Section 5606. Reporting Requirements and Penalties. Reporting requirements and penalties shall be as set forth by regulation prior to October 15, 1995.

Section 5607. Authority to Implement by Rules and Regulations. The Secretary of Labor and Immigration, the Secretary of Commerce, and the Secretary of Finance shall jointly promulgate regulations to implement the purposes of this Act. To the extent that they do not conflict with the provisions of this Act, these regulations shall include re-promulgating regulations originally published in Volume 9, No. (October 15, 1987) of the Commonwealth Register as Emergency Regulations; republished as Final Regulations in Vol. 10, No. 1, of the Commonwealth Register (January 19, 1989), subsequently amended and in effect prior to their repeal effective May 15, 1995 and October 15, 1995."

Section 4. Ratification. Any procedural or legal defect in the promulgation of those former regulations referenced in 4 CMC section 5607, as enacted by this Act, is hereby ratified.

Section 5. Limitation on Applicability. Unless specifically made applicable by local law, this Act shall apply only to the Third Senatorial District.

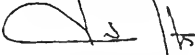
Section 6. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 7. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statute.

1 repealed or under any rule, regulation or order adopted under the statutes. Repealers contained  
 2 in this Act shall not affect any proceeding instituted under or pursuant to prior law. The  
 3 enactment of this Act shall not have the effect of terminating, or in any way modifying, any  
 4 liability, civil or criminal, which shall already be in existence at the date this Act becomes  
 5 effective.

6 Section 8. Effective Date. This Act shall take effect upon its approval by the Governor  
 7 or upon its becoming law without such approval.

CERTIFIED BY:



JESUS T. ATTAO  
 Acting Speaker  
 House of Representatives

ATTESTED BY:



EVELYN C. FLEMING  
 House Clerk


*Vetoed* this *4th* day of *April*, 1996

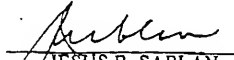
  
 FROILAN C. TENORIO  
 Governor

Commonwealth of the Northern Mariana Islands

Overridden by the House of Representatives on May 28, 1996 and the Senate on April 10, 1996 with the affirmative vote of two-thirds of the members in each house.

CERTIFIED BY:

  
DIEGO T. BENAVENTE  
Speaker of the House

  
JESUS R. SABLÁN  
President of the Senate



GOV. COMM. 10-84  
(HOUSE)

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

FROILAN C. TENORIO  
Governor

JESUS C. BORJA  
Lt. Governor

Caller Box 10007  
Saipan, MP 96950  
Telephone: (670) 604-2200  
Fax: (670) 604-2211

The Honorable Diego T. Benavente  
Speaker, House of Representatives  
Tenth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

01 JUN 1996

and

The Honorable Jesus R. Sablan  
President of the Senate  
Tenth Northern Marianas  
Commonwealth Legislature  
Saipan, MP 96950

4  
JUN 3 1996  
RECEIVED

Dear Mr. Speaker and Mr. President:

This is to inform you that pursuant to the override of H.B. 10-152, H.D.1, entitled, the "Garment Industry Moratorium Act of 1996," by the House of Representatives and the Senate, the bill became Public Law No. 10-9.

Sincerely,

FROILAN C. TENORIO

CC: Department of Commerce  
Department of Finance  
Special Assistant for Programs and Legislative Review



*The House of Representatives*  
 NORTHERN MARIANAS COMMONWEALTH LEGISLATURE  
 P.O. Box 586  
 Saipan, MP 96950

MAY 30 1996

The Honorable Froilan C. Tenorio  
 Governor  
 Commonwealth of the Northern  
 Mariana Islands  
 Capitol Hill  
 Saipan, MP 96950

Dear Governor Tenorio:

This is to inform you that the Tenth Northern Marianas Commonwealth Legislature repassed House Bill No. 152, H.D.1, the "Garment Industry Moratorium Act of 1996," over your veto, by the affirmative vote of two-thirds (2/3) of the members of each House, in the House of Representatives on May 28, 1996, and in the Senate of April 10, 1996.

House Bill No. 10-152, H.D.1 is now law. Please inform us of the Public Law number assigned to this Act.

Sincerely,

  
 Evelyn C. Fleming  
 House Clerk





COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
DEPARTMENT OF PUBLIC SAFETY  
Jose M. Sablan Building  
Caller Box 10007  
Saipan, Mariana Islands 96950



## MEMORANDUM

Commissioner, DFS  
Jose M. Castro

Director of Corrections  
Jose C. San Nicolas

Date : July 09, 1996  
To : Juan N. Babauta  
Washington Representative  
From : Director of Corrections  
Subject: CNMI Prison Report

As per your request, the total Inmate's Serving Sentence in the CNMI prison, as of July 1, 1996 are as followed:

Inmates Serving Sentence in Saipan	<u>59</u>	Detention Facility (Detainees):	
Tinian	<u>01</u>	Awaiting Trial	<u>12</u>
Rota	<u>01</u>	Awaiting Sentence	<u>03</u>
TOTAL:	<u>61</u>	TOTAL:	<u>15</u>

Breakdown of Inmate population by Citizenship, including Tinian and Rota:

Inmate's	Detainee's
CNMI	<u>03</u>
Guam	<u>00</u>
Palau	<u>01</u>
Philippine	<u>03</u>
Chuuk	<u>00</u>
Japanese	<u>02</u>
Chinese	<u>04</u>
Pohnapei	<u>01</u>
Korean	<u>01</u>

The Annual Operating Cost of Prison facility in the CNMI: (see attached)

Jose C. San Nicolas

cc: Commissioner



I hope that this information provided is sufficient. Should you have any other concern, please feel free to contact my office.



FRANCISCO D. CABRERA

7/10/96

6126	Holiday Pay	22,824.06	28,963.72
	<b>Total Personnel</b>	<b><u>\$1,208,214.03</u></b>	<b><u>\$1,601,935.09</u></b>
6213	Dues & Subscriptions	140.00	250.00
6218	Printing & Photocopying	550.00	600.00
6219	Professional Services	700.00	1,000.00
6224	Repairs & Maintenance	10,597.44	10,000.00
6225	Travel	1,400.00	2,000.00
6301	Books & Library Materials	350.00	500.00
6302	Food Items	255,000.00	250,000.00
6304	Supplies-Office	1,400.00	3,000.00
6305	Supplies-Operations	4,900.00	10,000.00
6440	Furniture/Fixture	1,380.62	0
	<b>Total Operations</b>	<b><u>\$275,868.06</u></b>	<b><u>\$277,350.00</u></b>
	<b>Grand Total</b>	<b><u>\$1,484,082.09</u></b>	<b><u>\$1,879,285.09</u></b>



**Commonwealth of the Northern Mariana Islands**  
**Office of the Resident Representative to the United States**

2121 R Street, NW, Washington, D.C. 20008 • Phone: (202) 673-5869 • FAX: (202) 673-5873

**Juan N. Babauta**  
 Resident Representative

July 10, 1996

Hon. Elton Gallegly  
 Chairman, Subcommittee on Native American  
 and Insular Affairs  
 U.S. House of Representatives  
 1522 Longworth House Office Building  
 Washington, DC 20515

Dear Chairman Gallegly:

I am writing to add factual detail regarding prison inmates from the freely associated states to the record of the hearing your Subcommittee held June 26, 1996, on the report of the joint Federal-CNMI Labor, Immigration and Law Enforcement Initiative.

The second of the two recommendations made in that report was that CNMI Covenant funds be directed to improving prison facilities. I testified at the hearing that this recommendation fails to take into account that a significant number of inmates in the CNMI are immigrants from the freely associated states. Congress committed to mitigating the fiscal impacts to the CNMI Government of such immigrants in Public Law 99-239.

Furthermore, I testified, Covenant funds, which Congress has designated to aid economic development and raise the standard of living of the people of the CNMI, would not be appropriately used paying for the costs of incarceration of immigrants from the freely associated states.

I provided at the hearing a 1993 population count of freely associated state citizens in CNMI prisons. I have now received a current count, as well as information on the operational costs the CNMI bears. Summarizing the attached documents:

- 13% of the inmate and detainee population are freely associated state citizens
- approximately \$195,000 in current year and \$247,274 in projected FY97 operational costs are attributable to freely associated state citizens
- approximately \$1,447,368 of the estimated \$11 million needed for prison capital expenditures can be attributed to the impact of freely associated state citizens

Hon. Elton Gallegly  
July 10, 1996  
Page 2

Thank you for adding this information to the hearing record.

I would also like to take this opportunity to note that the Interior Department has long argued — to justify its ten year failure to provide an annual report to Congress on the fiscal impacts of immigration from the freely associated states — that it is simply too difficult to obtain data needed to make such a report from the CNMI Government. For your information, I requested the enclosed data from the CNMI Government on June 27 and received it two weeks later.

Sincerely,

A handwritten signature in black ink, appearing to read "Juan N. Babauta", written in a cursive style.

JUAN N. BABAUTA  
Resident Representative

cc: Allen Stayman, Office of Insular Affairs

enc: CNMI Prison Report



## COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

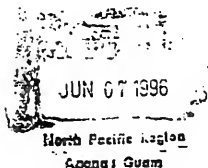
FROILAN C. TENORIO  
Governor

JESUS C. BORJA  
Lt. Governor

MAY 30 1996

Caller Box 10007  
Saipan, MP 96950  
Telephone: (670) 664-2200  
Fax: (670) 664-2211

Office of the Inspector General  
U.S. Department of the Interior  
North Pacific Region  
238 Archbishop F.C. Flores Street, Suite 807  
Pacific News Building  
Agana, Guam 96910



Attn: Mr. Peter J. Scharwark

Dear Mr. Scharwark:

Re: Final Audit Report on Management of Public Land, No 96-I-596

This is to provide the response requested in Inspector General Lewis' letter of March 20, 1996, to the Final Audit Report on Management of Public Land, March, 1996.

First, on behalf of myself and my staff, I would like to apologize for our failure to respond to the draft report. This was not due to lack of concern about the report, but an administrative oversight on our part. I hope that this did not inconvenience you.

I recognize that we have missed the deadline for responding to the draft report, and that the March report is a final report. However, I must point out one very important error in the assumptions underlying the audit. The Inspector General's letter states that an objective of the audit was "to determine whether the Commonwealth was effective in . . . (2) controlling and utilizing U.S. Government land transferred to the Commonwealth . . . ." There is an erroneous assumption underlying this statement. The lands being managed by the Division of Public Lands were not U.S. Government land transferred to the Commonwealth. Such lands were lands owned by the Japanese Government and Japanese nationals prior to June, 1944. Following World War II, those lands were managed by the Trust Territory Government, which was created by the United Nations. While it is true that the U.S. Government administered the Trust Territory Government until creation of the Commonwealth, the Trust Territory Government was not a part of the U.S. Government, and the public lands were not U.S. Government lands. They have belonged to the people of the Northern Mariana Islands since 1944, first in trust and now directly.

The Audit Report is in three parts: Land Exchanges, Lease Management, and Homestead Administration. We will respond to each part of the Report separately.

## I. LAND EXCHANGES

The Report makes three recommendations: That we should--

1. Develop and implement written policies and procedures which require that land exchanges are of comparable value based on current appraisals;
2. Develop and implement written policies and procedures which require that land exchanges are made only when they serve a public purpose; and,
3. Suspend all pending land exchange agreements until the first two recommendations have been implemented.

### RESPONSES

1. The Division of Public Lands issued new land exchange regulations on May 15, 1996, effective May 25, 1996. These regulations require that land exchanges be based on appraisals of fair market value. The regulations do not impose a strict requirement about how recent the appraisal must be, because we believe that we must retain some flexibility. A copy of the new regulations are enclosed for your information. Please see especially pages 7-8 for rules dealing with appraisals.
2. The new regulations also require the Governor's Certification or the Legislature's Declaration or Determination of a public purpose, as the first step in a land exchange. Please see page 10, number 5.A.1, for this rule.
3. Land exchanges were temporarily halted. However, they are now proceeding, pursuant to the new regulations.

## II. LEASE MANAGEMENT

The Report makes three recommendations: That we should--

1. Develop and implement policies and procedures which require that lease agreements base minimum rentals on the appraised fair market value;
2. Require that the financial documents required by our lease agreements be provided; and, in a related matter, make certain that lessee rental calculations are accurate; and,
3. Insure that lease rental payments are collected, or remedies provided in the lease agreements are pursued in a timely manner.

### RESPONSES

1. It is not possible to "develop and implement" the changes needed to comply fully with

this recommendation in a short time. However, several steps have been taken or are being considered.

- a. The Division of Public Lands is seriously considering issuing regulations governing the leasing of public lands. If a decision is made to issue regulations, it will be a lengthy process, probably requiring the input of many concerned people, and involving one or more public hearings. It is our hope that such regulations would result in a more regularized procedure for the leasing of public land, one which would satisfy your recommendations, at least in part.
  - b. The Division of Public Lands has had the informal policy of renting public lands at 8% of the value of the land at least since early 1988, according to minutes of the MPLC Board. However, we recognize that that has not always been done. The regulations, if issued, may be expected to address this issue, including both the 8% figure itself, and the procedures for determining rent. However, it is my hope that the Division will not adopt a strict 8% rule, because we do need some flexibility in the leasing of public land. For example, some leases may provide other benefits to the Commonwealth--such as educational, cultural, or economic--in addition to the rent being paid. Such benefits should not be ignored.
  - c. The Division is seriously considering either hiring an employee or retaining a consulting firm with expertise in the commercial leasing of land. The intent of this step would be to bring professional expertise to the leasing process. Care must be taken in this step, of course, to insure that the Division receives a benefit at least equal to the cost.
2. The Division has hired a new manager of its Account Compliance Section. This individual has training and experience in both business and computer technology. He has already begun the process of modernizing the Division's Account Compliance methodology, including modern computer software adapted to the Division's needs. This improved leadership in the Account Compliance Section, and modern computer technology, will improve the monitoring of accounts. Included in his review of the problems of the Account Compliance Section is the failure of some lessees to provide financial documents. He is developing a method of follow up, to require lessees to provide the required documents.
  3. The new Account Compliance Manager has reviewed the delinquent account problem. It is his plan to take the following steps *after* the new computer software has been acquired and installed, and the employees trained: To send notices of delinquency to all delinquent lessees and permittees; and to refer those accounts which are not brought current, or at least do not make arrangements to become current within a reasonable time, to the Division's attorneys for collection. This will take time, because he estimates that there may be as many as 200 delinquent accounts. It is not possible to estimate how many of those will require legal action to collect. However, it is the Division's goal, through these steps, first to bring all accounts current (or to



write off uncollectible accounts, to the extent necessary), and then to keep them current through improved monitoring and enforcement.

4. The division has hired a new Land Enforcement Manager, who is working to improve on-site inspections of lessees and permittees. However, it will not be possible to inspect every leasehold and permitted area as often as might be preferred, due to the large number of inspections to be conducted, and limited staff (3 employees). The Land Enforcement staff also has responsibility for inspecting encroachments on the public land, and homestead lots.
5. In connection with items number 2 and 3 above, the Division has requested that a second attorney be assigned full time to the Division. While this will take time, when it is accomplished, it should facilitate follow up on enforcement of lease provisions.

### III. HOMESTEAD ADMINISTRATION

The Report makes four recommendations: That we should--

- 1a. Require that all deeded lots be inspected periodically, to insure that they are being used in accordance with laws, regulations, and deed restrictions.
- 1b. Develop and implement policies and procedures to insure that homestead permits are awarded to applicants who are eligible under applicable regulations and who have the greatest need.
2. Review all previously issued homestead deeds and permits and perform on-site inspections so that assurance is provided that deeded homestead lots are being used in accordance with applicable laws, regulations, and deed restrictions.
3. Initiate administrative and/or legal action to re-acquire the following homestead lots (that is, cancel the deeds and return the lots to the Division of Public Lands):
  - a. Lots which the recipients are using or subleasing improperly;
  - b. Lots which the recipients sold in violation of the 10-year Constitutional requirement for homestead ownership; and,
  - c. Lots which were deeded to ineligible applicants.
4. Request an Attorney General's opinion on the possibility of seeking recovery of illegal and/or improper monetary gains resulting from the sale and/or lease of homestead lots in violation of law; and initiate legal action to recover such funds, as appropriate.

### RESPONSES

- 1a. It would currently be impossible to inspect all deeded homestead lots for compliance

with laws, regulations and deed restrictions. We have a staff of three people who must do inspections of lots under homestead permits, all lease inspections, and numerous other tasks such as watching for unlawful use of the public lands. While we are not denying that such inspections would be useful in the interests of law enforcement, it would literally take an act of the Legislature to appropriate money to staff and equip such an effort. This must be relegated to long-range planning.

- 1b. This recommendation involves several tasks: Review of homestead applications, cross checking with the Division of Land Registration and Survey for other interests in land by applicants, and review of financial information submitted by applicants. The Division has hired a new Homestead Manager, as of May 1, 1995 (subsequent to the your audit). He has instituted a new policy of performing each of these tasks, to insure eligibility and need.

The issue of need is settled by assigning each eligible applicant to a priority group, according to the existing homestead regulations, as follows:

Priority Group 1

- |    |  |
|----|--|
| C1 | Married with dependents, or single parent; need for housing. |
| C2 | Married, with no dependents; need for housing.               |

Priority Group 2      Not married; need for housing.

Priority Group 3      Temporarily out of the Commonwealth, usually for medical, educational, or employment purposes, or military service.

Under the Homestead policies established by the former MPLC Board, lots are awarded first to all members of Priority Group 1 before awarding lots to members of Priority Group 2, and so forth.

2. This recommendation overlaps with 1a above. The only new part is the review of the homestead deeds and permits, in addition to inspection of the lots. Review of the deeds themselves will not be useful without the staff to conduct on-site inspections. We have a record of all previously deeded homestead recipients, and so do not need to review the deeds to determine their identities or lot numbers.

All permit files are reviewed for compliance with homestead laws and regulations before deeds are issued. The village homestead lots under permit are inspected at least three times before a certificate of compliance is issued: (1) during the first three months of the permit; (2) during the first two years, to check for compliance with the requirement that a home has been built and the permittee is living on the lot; and (3) at the end of the three-year permit period, to check for compliance with all requirements before the certificate of compliance is issued.

This procedure is not a written policy, however. It is the practice of the Homestead and Land Enforcement Sections of the Division of Public Lands.

3. Parts a and b of this recommendation would require on-site inspections, as recommended in #1a above. As mentioned above, the Division of Public Lands does not currently have the staff to conduct such an ambitious inspection program. The Division intends to do what it can to accomplish such inspections, but it will be very difficult to go very far with it, given the current understaffing. In addition, the Office of the Attorney General does not currently have sufficient attorneys to initiate the number of lawsuits contemplated by this recommendation.

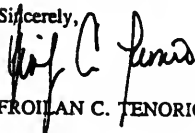
Part c of this recommendation would require the Homestead staff to invest a very large amount of time in the review of old files and additional investigation. This, too, is beyond our staffing at the present time. At best, they can only investigate files that are brought to their attention for possible violations of law.

In addition, I am advised by counsel that before initiating legal action to re-acquire lots from ineligible homestead recipients, we must conduct legal research into whether we have the authority to set aside such deeds. The Director of the Division of Public Lands has requested the Attorney General to conduct research into that question.

4. The Director of the Division of Public Lands has requested a legal opinion from the Attorney General into the question of recovering funds from homestead recipients who wrongfully sold or leased their homestead lots. Initiation of legal action to recover such funds must await the issuance of the legal opinion.

We hope that the above response meets your needs for the immediate future. As you can see, there is a great deal to be done in order to implement the recommendations of the audit, and we have made a serious beginning on the task. If you require any additional information, please do not hesitate to contact me.

Sincerely,



FROILAN C. TENORIO

Enclosure

# 1985 OMNIBUS TERRITORIES LEGISLATION

---

## HEARING BEFORE THE COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1441

A BILL TO AMEND THE GUAM ORGANIC ACT, AND FOR OTHER PURPOSES

S.J. Res. 192

JOINT RESOLUTION TO AUTHORIZE FINANCIAL ASSISTANCE FOR THE NORTHERN MARIANA ISLANDS, AND FOR OTHER PURPOSES

H.R. 2478

AN ACT TO AMEND THE REVISED ORGANIC ACT OF THE VIRGIN ISLANDS, TO AMEND THE COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS, TO AMEND THE ORGANIC ACT OF GUAM, TO PROVIDE FOR THE GOVERNANCE OF THE INSULAR AREAS OF THE UNITED STATES, AND FOR OTHER PURPOSES

DECEMBER 3, 1985

### STATEMENT OF HON. CARL T.C. GUTIERREZ, SPEAKER, GUAM LEGISLATURE

Mr. GUTIERREZ. Thank you, Mr. Chairman.

Good morning, members of this distinguished committee. With me today is two senators that will speak to two different issues, Senator Quitugua of the education will speak on 29(b); and Senator Santos on the land issue. But I want to take this opportunity to possibly use to further amend 2478 as a vehicle that deals with the independent public prosecutor, independent public auditor, and the independent civil service commission.

This legislation is endorsed by Congressman Blaz, and I thank him for that, but creation of these offices, Mr. Chairman, is the solution for a problem that has plagued Guam all too often in recent years—and that is, corruption. No government is immune from this problem, but lately Guam seems to have suffered more than its share of abuses.

There was the last administration's \$26 million road-paving scandal. Then the Federal extortion conviction of several GovGuam officials, plus food stamp fraud, improper contracts, and various illegal

activities throughout government. Things are just getting out of hand, Mr. Chairman.

In my view, the problems of corruption on Guam stems largely from excessive political interference in divisions of government that need freedom from politics to be effective. Attorneys general on Guam, for example, depend on the Governor for their jobs. Thus, very few AG's will prosecute the administration's political allies. The same applies to auditors—few will reveal fraud that would embarrass the Governor. The bottom line is, Mr. Chairman, that prosecutors and auditors without independence is like guard dogs without teeth. The secret to beating corruption is simple: Give those guard dogs the independence they need.

Before we can move forward, however, we need Congress' help. Right now Federal law is tying our hands behind our back. We cannot legally create these offices in an independent fashion because the Federal Organic Act forbids it. The act's sweeping grant of power to the executive branch already has blocked two futile attempts by the legislature to create an independent special prosecutor. Both attempts were struck down by the courts as "inorganic."

All I ask today is that Guam be freed from these Federal handcuffs and allowed to fix our government with our own hands. The legislation Congressman Blaz and I are urging holds the key. The legislation would amend the Organic Act to expressly permit the legislature to create these offices in an independent fashion.

The proposal authorizes the legislature to establish such offices and to design procedures for selecting officeholders. Once the offices are established by local law, the legislature could not amend such law for 6 years, in order to ensure real independence. After such 6-year period, any amendments to this law would be followed by additional 6-year periods during which the legislature would again be prohibited from making further changes.

The proposal would not require Guam to establish such offices, nor would it dictate how they will be organized. These are local issues and should be decided by the people of Guam through their elected representatives. All the legislation does that we're seeking essentially is eliminate the Federal restrictions that stand in our way.

Most members of the legislature, and I believe most of Guam's citizens, do strongly support creating these independent offices. In fact, the Eighteenth Guam Legislature just last week recently adopted Resolution No. 217, which wholeheartedly endorses this proposal.

Let me just briefly address each of these proposed offices, Mr. Chairman.

An independent public prosecutor, in my view, represents the most effective means available for reducing corruption on Guam. Prosecutors need freedom from political pressure in order to attack corruption within the administration's camp. Yet now, as I explained earlier, the attorney general is the Governor's captive. No matter how honest or well meaning, he simply must respond to political pressures to keep his job. It should thus come as no surprise that prosecutions of high level officials are very rare, except when a new administration occasionally decides to crack down on its predecessors.

The white collar crime task force created by the current administration reflects this historical pattern. The task force does have some commendable accomplishments. Yet it is anything but independent and, in fact, is headed by the Lieutenant Governor. Predictably, the vast majority of its cases concern illegalities perpetrated during the term of the previous administrations.

The need for an independent public prosecutor goes hand in hand with the need for an independent public auditor. Only continual oversight by nonpolitical auditors can eliminate the fraud and inefficiencies plaguing our government. Currently, independent government auditing is limited to isolated investigations by the Interior Department's inspector general. Yet the IG's sporadic reports are issued long after problems arise. This is too little too late. The Government of Guam needs an independent local auditor back on Guam breathing down its neck at all times. This is the only way that irregularities can be effectively deterred or at least detected before they develop into financial disasters.

Let me turn now to the need for an independent civil service commission. This aspect of our proposal responds to a specific type of corruption on Guam: the corrupting of our civil service merit system. As you know, about a year ago all the members of the Guam Civil Service Commission were forced to resign or relieved of their duties. Once again, partisan politics was injected into a system designed to protect employees from politics.

As a result of last year's mass firing, the whole merit system has been undermined. Government officials are thus virtually defenseless when threatened with political pressures. Their fate will remain at the mercy of the political power brokers until Guam is allowed to design a civil service commission that is truly independent.

The need for an independent public prosecutor, public auditor, and civil service commission ultimately should be addressed in a constitutional convention pursuant to the Guam Commonwealth Act. I am a member of the commission on self-determination and am fully committed to leading Guam toward Commonwealth status. But I am also a realist, Mr. Chairman, and I know it will be quite some time before a Commonwealth Act is passed, signed into law, and approved by Guam voters. It will even be longer before a constitutional convention is then called and completed.

We cannot afford to wait. The problems of corruption, inefficiency, and political meddling are all too urgent, too severe, and too costly, and they must be addressed now.

So I would like to leave it at that, Mr. Chairman, and I hope that any vehicle could be used at this moment to effectuate these new offices.

PACIFIC DAILY NEWS, Friday, August 30, 1986, 23

# OPINION

## We must not accept AG office sloppiness

When Chief Prosecutor Stephen Maxwell called for the dismissal of aggravated murder charges against Arthur G. Seagraves and Luis G. Seagraves Wednesday because the case was a mistake — that was the last straw.

Maxwell's action was a complete reversal from his Aug. 15 statement to Judge Frances Tydingo-Gatewood at a bail hearing, that both men should remain in jail because they have "the highest incentive to flee this jurisdiction."

He told the judge that he had an "extremely strong" case and would be able to convict the two men of slaying Michelle Lintiao last month.

If this were an isolated incident, most would write it off as an unfortunate error that has to be corrected. But this comes across as just the latest of several bungled criminal prosecution cases since Maxwell took over in February.

Now he says the police withheld evidence that points to their innocence. Perhaps these men are innocent, but Maxwell said he didn't want to turn over the evidence because it might jeopardize further investigations into the case.

If this were an isolated incident, most would write it off as an unfortunate error that has to be corrected. But this comes across as the latest of several bungled criminal prosecution cases that have occurred since Maxwell took over in February. Here are some other examples discovered by the *Daily News*:

■ June 12: Judge Frances Tydingo-Gatewood dismissed aggravated assault and other charges against Josephino T. Michael. Because of "flagrant prosecutorial misconduct" she ordered Assistant Attorney General Charyl Carter, the prosecutor in this case, held in contempt of court.

■ June 14: Judge Benjamin J. Cruz threw out a drug and firearms case against Roy Torres Cabecango Jr. The judge said he was losing the case out so the prosecution wouldn't be embarrassed with another acquittal. The man was described by police officers as one of the biggest drug dealers on Guam.

■ July 2: Judge Joaquin V.E. Manibusan Jr. dismissed a robbery case against Samuel David Thier who had spent more than three years in jail waiting for trial. Manibusan said the delay was the "result of prosecutorial negligence."

■ July 10: Judge Frances Tydingo-Gatewood dismissed rape charges against Vincent Rosario Manibusan and fined the AG's office \$3,000 for a "sloppy grand jury indictment." She also said, "Let it be known that this kind of prosecution can not happen again."

■ July 28: Judge Frances Tydingo-Gatewood threw out an armed robbery case against Jay John Cruz because prosecutors violated rules regarding the submission of evidence.

■ Aug. 1: Judge Frances Tydingo-Gatewood dismissed drug dealing charges against Ferdinand Regio Galientes and Delfin Regio Galientes and rebuked the AG's office that when they file charges "they should be trial ready at that point."

This record of prosecution sloppiness clearly detracts from the credibility of the AG's office. And because Attorney General Calvin Holloway hasn't responded to the obvious deficiencies or taken action to set things straight, it also reflects poorly on him as well.

And the silence from Gov. Carl Gutierrez, Holloway's boss, is equally deafening.

If people lose faith in the criminal justice system, then we'll end up with anarchy. And some eventually will decide they've had enough and decide to take justice into their own hands.

We can't live with continued bungling in the prosecution division, and we won't tolerate the apparent lack of concern from the AG and the governor.

The people of Guam want to put teeth into "getting tough on crime." It's time to elect our own attorney general so we can take control of a justice system that is out of control.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

October 15, 1996

Honorable Elton Gallegly  
Chairman  
Subcommittee on Native American  
and Insular Affairs  
Committee on Resources  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed are answers to written questions submitted to the Department of the Interior after the July 24, 1996 hearing of the House Subcommittee on Native American and Insular Affairs.

Sincerely,

Allen P. Stayman  
Director  
Office of Insular Affairs



Subcommittee on Native American and Insular Affairs  
Oversight Hearing on Territorial Issues  
July 24, 1996

Questions for Department of Interior

**Question 1.** The Inspector General's Office provided data from its March 1988 Audit Report. The Committee is interested in receiving more current data. What is the amount of annual lease rent that is being collected by the Department from each lessee?

**Answer.** The 1952 Water Island lease provided that the master lessee would pay a base annual rent of \$3,000. With the termination of the lease in December, 1992, the Department took the position that the lessee had essentially abandoned its interest in the property and declined to accept the annual rent. This decision was based in large part on the litigation position of the United States in the ongoing litigation with the former master lessee in the United States Court of Federal Claims. With the settlement of the lawsuit, there are no further lease payments due from the former master lessee.

The lease authorized the master lessee to make subleases. The subleases provided for a nominal annual rental, generally in the range of \$25 although some were higher. Upon the termination of the master lease, a small number of sublessees attempted to tender a \$35 annual rental payment to the Department, but we declined to accept it. Again, this decision was based upon the litigation position of the United States in the ongoing litigation with the master lessee in the United States Court of Federal Claims. We also considered the cost of administering and implementing a collection program for the small sums of money involved. With the proposed sale of fee title of the Water Island tracts to the sublessees, no rent is currently being collected.

**Question 2.** Is this amount being collected from all of the sublessees, including those in Sprat Bay (who are at times referred to as sub-sub-lessees)?

**Answer.** No, as explained in response to question 1, the Department is not currently collecting any rent.

**Question 3.** Did the requirement to collect rent end or change at the expiration of the 40 year lease?

**Answer.** With respect to the master lessee, the rental requirement continued through the master lessee's occupation of the property. As discussed in response to question 1, the United States took the litigation position that the property had been abandoned by the former master lessee.

With respect to the subleases, it is a difficult question whether the rental payments could have been changed upon the termination of the lease. As discussed above, the decision not to collect rent was based primarily on litigation considerations. The question should become moot by the proposed sale to the sublessees of fee title to the properties.

**Question 4.** Are these funds being properly collected and accounted for?

**Answer.** Please see the answer to question 1, above.

**Question 5.** What management practices have attributed to the delay in resolving the transfer of title to Water Island properties?

**Answer.** The ongoing litigation with the former master lessee has been the major source of the delay. We could not proceed to transfer title while this challenge to the Department's title was unresolved. The Department also was required to comply with the National Environmental Policy Act, as amended, and with other related statutes such as the National Historic Preservation Act.

**Question 6.** The Environmental Impact Statement was issued in May, 1996. Why wasn't this initiated after the 1992 expiration of the lease?

**Answer.** In fact, the preparation of the Environmental Assessment was initiated shortly before the 1992 termination of the lease. Time was required to prepare the environmental assessment, seek community input, and reach a decision on the alternatives presented.

**Question 7.** What was the Department's position on the value of the possessory interest to the hotel and what was the ruling of the court?

**Answer.** The United States, through the Department of Justice, filed a summary judgment motion in the United States Court of Federal Claims arguing that the former master lessee was not entitled to compensation for its alleged possessory interest as a matter of law. The court never ruled on the motion in that the case was submitted to arbitration before the American Arbitration Association and judicial proceedings were stayed.

During the arbitration proceeding, the United States maintained that the former master lessee was not entitled to compensation for its claimed possessory interest as a matter of either law or fact. The Arbitrator, rendered an award of \$12 million against the United States. The parties subsequently compromised on a consent judgment of \$7.5 million which was entered by the Claims Court on August 2, 1996.

The stated intention of the Department of the Interior was to offer parcels for sale first to sublessees of record and, in fact, offers have been made to a number of sublessees who were in possession of their parcels at the time of termination of the master lease between the government and Water Island Corporation. However, on the Sprat Bay side of Water Island no offers were made to the sublessees in possession. Instead, an offer was extended only to Sprat Bay Corporation, which had subleased and assigned all its right, title and interest in the majority of its parcels years ago.

**Question 8.** Can the Department of the Interior explain why it has extended an offer that is inconsistent with its stated policy regarding sales of parcels?

**Answer.** The Department has followed its stated policy by extending its offer to purchase to all sublessees under the master lease. The sublessee for the Sprat Bay tract is the Sprat Bay Corporation.

**Question 9.** The time for performance of the written contract with Sprat Bay has passed and there do not appear to be any written extensions of time to perform. Does DOI consider the contract voidable at the option of either party?

**Answer.** The contract has been extended with the consent of both parties. We believe we have a contractual commitment to the Sprat Bay Corporation.

**Question 10.** Does the fact that Sprat Bay has transferred and assigned all its right, title and interest in certain parcels meant DOI will be obligated to transfer title to the transferee rather than to Sprat Bay Corporation?

**Answer.** No.

**Question 11.** Does the DOI feel that it has either a legal or a moral obligation to extend offers to sell to the sublessee in possession of each parcel before making an offer to any other party?

**Answer.** The Department believes it has a legal or moral obligation to the sublessees under the master lease. These sublessees include the Sprat Bay Corporation for the property subject to its sublease.

**Question 12.** Has DOI considered the fact that concluding its contract with Sprat Bay Corporation will result in dispossessing sublessees who have been in possession of parcels for years?

**Answer.** We have no reason to believe that this will be the result. The Department is unable to make a further response in that certain individual lot holders on Sprat Bay have filed suit against the Department and the Sprat Bay Corporation in the United States District Court for the Virgin Islands.

**Question 13.** What steps have been taken by DOI to insure that the possessory interests of each sublessee in possession at the time of termination of the master lease have been determined and paid before transferring title to Sprat Bay Corporation?

**Answer.** We are unable to respond to the question at this time due to the pendency of the litigation set forth in response to question 12, above.

**Question 14.** Does the transfer of title from the Government to a buyer require any further Congressional authorization? If not, what statutory authority permits sale of the parcels?

**Answer.** The sales are authorized by 48 U.S.C. 1545(a).



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

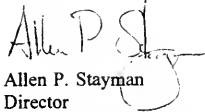
October 15, 1996

Honorable Elton Gallegly  
Chairman  
Subcommittee on Native American  
and Insular Affairs  
Committee on Resources  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

After the June 26, 1996 hearing of the Subcommittee on Native American and Insular Affairs you submitted a number of questions in writing. Enclosed are the answers of the Department of the Interior.

Sincerely,



Allen P. Stayman  
Director

Office of Insular Affairs

## QUESTIONS AND ANSWERS FOR THE DEPARTMENT OF THE INTERIOR

1. a. Is the Federal-CNMI Initiative on Labor, Immigration and Law Enforcement a Joint effort of the CNMI Government and Federal agencies?

Answer. The Federal agencies work cooperatively with the CNMI government on issues affecting the Initiative. This does not mean that the annual report and actions by Federal agencies must be approved by the CNMI. Indeed, in 1995, the CNMI submitted a separate report. We expected that a similar procedure would be followed in 1996.

- b. Is the Report a combined effort of the CNMI and Federal agencies? Why is there no CNMI component to the Report?

Answer. While the Federal agencies work cooperatively with the CNMI, the report is not a combined effort. Our expectation was that the CNMI would submit a separate report, as in 1995.

- c. Would you explain the lack of CNMI contribution to the Report?

Answer. The Second Annual Report on the Federal-CNMI Initiative on Labor, Immigration and Law Enforcement is the work product of Federal agencies. The CNMI responded to a number of our requests for information, which is included in the report.

2. The core of the problem identified in the Report is the inability of the CNMI government to control local immigration. It has been pointed out in the Report that "it is ironic that local control of immigration was insisted upon by the CNMI Government negotiators in order to prevent inundation by immigrants with a resulting loss of native Chamorro and Carolinian culture and influence. Yet, local control has had exactly opposite of the intended effect.
- a. Is it not true that the 1995 CNMI census show a total population of approximately 60,000 people with a population growth of 38 percent from 1990 to 1995 and the indigenous American citizen population is now outnumbered by a ration of 2 to 1?

Answer. The preliminary mid-decade census figures from the CNMI show the population in 1995 to be 59,913, with the population growth you describe. The ratio of aliens to United States citizens, however, is 54 percent of the total population to 46 percent.

- b. The unrestricted presence of alien workers has a dramatic impact on the social, economic and political institution as in the CNMI. It has been associated with increased drug trafficking, white collar crime and government corruption, an enormous strain on local government services and infrastructure, and a concern about the future political impact of

children of alien workers born in the CNMI, who are United States citizens by birth. Is it now appropriate for the Federal Government to step in and take over immigration control to help the CNMI preserve the intent of the Covenant?

Answer. The Federal agencies involved with the Initiative believe that it would be inappropriate for the Federal Government to assume immigration authority at this time. Our report on the Initiative contains no recommendation on immigration, but does state that the immigration issue will be considered in the coming year, as we assess the effectiveness and improvement in CNMI administration of immigration.

- c. In last year's report dated April 24, 1995, recommendation was made for a cap on alien workers to the 1992 levels, but the Report fails to address this recommendation and remains silent on the issue. Would you enlighten us of your dramatic change of position?

Answer. The 1995 report stated that if law enforcement does not improve or if the alien population increases above the 1992 level, then Federal authorities would, in 1997, seek application of the Immigration and Nationality Act (INA) to the CNMI. Since the time of that report, we have concluded that the INA may not fully address the immigration problems in the CNMI. Full application of the INA could have unintended consequences. Thus, the position on immigration was modified in 1996 to call for the presentation of options in 1997 for consideration by the Congress.

3. a. The major recommendation in the report calls for the federalization of the CNMI minimum wage. Is this recommendation concurred by the CNMI?

Answer. No. While some members of the legislature and several important business organizations have supported maintaining the automatic minimum wage increases enacted by the legislature a few years ago, the legislature and the Governor do not now support the Administrations' proposal to incorporate into Federal law the then-current CNMI minimum wage law (\$2.75 per hour with automatic \$.30 annual increases until the Federal (FLSA) minimum wage is achieved).

The CNMI Legislature recently passed and the Governor signed a new minimum wage bill that superceded the then-existing minimum wage law. The new law provides, effective July 1, 1996, a \$.15 an hour increase for the garment and construction industries with another \$.15 an hour increase a year later, and a \$.30 an hour increase for all other industries. Workers employed on existing employment contracts signed before May 6, 1996, would get no increase until the employment contract is renewed. The provision for future annual minimum wage increases is not included in the new law.

- b. The other recommendation in the Report urges Congress to direct the CNMI to utilize Covenant funds for the construction of prison and detention facilities. How would these recommendations help resolve the problems created by the unrestricted local immigration control in the CNMI?

Answer. The second annual report on the Initiative calls for the use of Covenant funds to build prison and detention facilities. The existing facilities are widely agreed to be inadequate. The result is that persons who are ordered deported are often found back out on the street. Ineffective deportation procedures contribute to immigration control problems. Construction of new facilities will not cure all the problems associated with unrestricted immigration. Also, increased law enforcement in the CNMI is resulting in the need for additional facilities.

4. The Report shows that more than 25 criminal cases were in the docket of the Federal District Court for 1994-95 and an additional 20 criminal cases for first three months of 1996, how many convictions were handed by the Court and where are the criminals incarcerated?

Answer. In Federal District Court for all of fiscal year 1995 (10/1/94 through 9/30/95) of 23 cases with 28 defendants, 12 cases brought conviction of 13 persons. In the first half of fiscal year 1996 (10/1/95 through 3/30/96) of 24 cases with 33 defendants, 11 cases brought the conviction of 16 defendants.















BOSTON PUBLIC LIBRARY



3 9999 05984 187 2

ISBN 0-16-053845-9



9 780160 538452

90000





